

Utility Advisory Commission Regular Meeting

Agenda

Thursday, March 3, 2022

7:00 pm – Gardner City Hall Council Chambers

CALL TO ORDER

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

CONSENT AGENDA

1. Standing approval of the minutes as written for the January 6, 2022 meeting of the Utility Advisory Commission.

NEW BUSINESS

1. Consider a recommendation to City Council to make changes to backflow compliance.
2. Consider a recommendation to City Council to award a contract to Denali Water Solutions for the Hillsdale Water Treatment Plant Waste and Residual Basin Cleanout 2022 thru 2025 Contract.

DISCUSSION ITEMS

1. Electric Distribution Standards for Outages
2. Project Updates
3. Electric Outage Reports- 4th Qtr 2021
4. Sewer Repair Reports- 4th Qtr 2021
5. Water Repair Reports- 4th Qtr 2021

OTHER BUSINESS

ADJOURNMENT

UTILITIES ADVISORY COMMISSION STAFF REPORT CONSENT AGENDA ITEM #1
MEETING DATE: MARCH 3, 2022
STAFF CONTACT: GONZ GARCIA, UTILITIES DIRECTOR

AGENDA ITEM: Standing approval of the minutes as written for the January 6, 2022 meeting of the Utilities Advisory Commission.

Background:

The draft minutes for the January 6, 2022 Utilities Advisory Commission meeting are attached.

Staff Recommendation:

Staff recommends approval of the minutes for the January 6, 2022 meeting of the Utilities Advisory Commission.

Attachments:

- Draft minutes of the January 6, 2022 Utilities Advisory Commission meeting.

**RECORD OF PROCEEDINGS
OF THE UTILITY ADVISORY COMMISSION
GARDNER, KANSAS**
Page No. 2022-1
January 6, 2022

The Utilities Advisory Commission of Gardner, Kansas, met in Regular Session on December 2, 2021, at City Hall. Present were Chairperson Barbara Coleman, Vice Chairperson Bryce Augustine, Commissioner Gary Williams, Utilities Department Director Gonzalo Garcia, Staff Engineer Ric Gere and Administrative Assistant Erin Groh.

CALL TO ORDER

The meeting was called to order at 7:05 p.m. by Commissioner Bryce Augustine.

PLEDGE OF ALLEGIANCE

CONSENT AGENDA

- 1. Standing approval of the minutes as written for the December 2, 2021, meeting of the Utility Advisory Commission.**

Chairperson Coleman noted that in the last paragraph, second sentence of the December 2nd minutes there was a word omitted and should have read "100% of [residential] report for known backflow devices have come in...." with the word residential being added.

Motion by Commissioner Williams, seconded by Vice-Chairperson Augustine to approve the amended minutes and Consent Agenda.

Motion carried 3-0 Aye

OLD BUSINESS

- 1. Consider a recommendation to City Council to revise the Electric Residential Service Connection Fee.**

Director Garcia presented the staff report and stated that he contacted various municipalities to compare at what point they collect Electric Residential Service Connection fees. Ottawa collects the fees for Residential Service Connection at final plat. Eudora collects the fees at final plat and will not issue the building permit until the fee is collected. Osawatomie does the actual fee collection during the building permit application. For Garden City, they are mainly commercial and industrial so in order to promote residential development they don't charge for the connection fee. In Edgerton, they charge up front but Garcia was not able to get the exact time at which the fees are collected. Chairperson Coleman asked Garcia in the previous meeting to find out about Evergy and when they collect fees but he was only able to find out that they collect up front but he didn't get the exact time in which they collect the fees up front.

Garcia noted that it takes 6-9 months to get materials in for Electric and it can take 4-6 months to receive payment back from some developers when Utilities invoices them. The actual construction of the electric infrastructure can take up to six months. Commissioner Williams asked what we're collecting and Garcia said that the \$2300 per lot fee covers the service per lot for a development. Garcia said the city would provide the conduit, cable, meters, materials and labor to get the lots ready. Williams asked who in the end pays for the transformers in a development. Garcia responded that the developers will pay for the transformers in their development. Williams asked if there is an inventory of materials and Garcia said that the city keeps a critical supply on hand. Commissioners later went over what other materials are included in the \$2300 electric residential service connection fee and Garcia added that termination, cabinets, and wire are included as well.

Motion by Vice-Chairperson Augustine, seconded by Commissioner Williams to recommend to City Council to revise the Electric Residential Service Connection Fee.

Motion carried 3-0 Aye

NEW BUSINESS

1. Consider approving a recommendation to City Council to execute an agreement with Altec Capital Services to replace two specialty vehicles in the lease program.

Director Garcia gave the staff report. Garcia stated that the leases for the two service trucks are up in December of 2022 and the lead time to construct such vehicles can take about 20 months. The cost of the vehicles has gone up by around \$1000 per month due to the increase in the cost of steel. Commissioner Williams asked if this increased amount in this year's budget. Garcia replied that he was not sure at that time but that it takes two years to get the trucks and a revision could be made to the budget. Vice-Chairperson Augustine asked why the city leases the trucks instead of purchasing them. Garcia said that the city used to buy the trucks but when they have tracked the cost over time, it showed that it was cheaper to lease. Chairperson Coleman asked why the trucks were not ordered earlier to accommodate for the long wait time. Garcia said that in the past the wait time was only 8-9 months wait and that has changed and that they just found out that the trucks were needing replaced. Garcia said that the lease will just be extended until Utilities gets the new truck, which has been done before. Augustine asked if the numbers could be gone over again in the future when trucks are being discussed again. Garcia said that he would compare the numbers next time he department leases trucks.

Motion by Williams, seconded by Vice-Chairperson Augustine to recommend to City Council to execute an agreement with Altec Capital Services to replace two (2) Small Aerial Lift Trucks in the lease program for four additional years at a monthly lease rate of \$4,053.83 per month (\$48,645.96 per year) per truck excluding taxes, licensing fees, and delivery charge.

Motion carried 3-0 Aye

2. Consider approving a recommendation to City Council to purchase POSM Server from POSM Software, LLC.

Garcia stated that in 2017 a trailer that includes a computer and [CCTV] equipment which was purchased to do the inspections of the sanitary sewer. That computer came with software called POSM to do the inspections. This software can be used with Lucity for work orders and can use a GIS mapping system to see where the work is being done at. In 2021, Utilities engaged in a demo trial of POSM at no cost to evaluate the use of POSM GIS Server. City staff installed this software onto the City's network server in early 2021 to do this trial. The installation of POSM GIS Server has allowed the inspection data to be backed up from the inspection trailer computer to the City's network server. This eliminated human errors in the data transfer which resulted in lost data in the past. The POSM GIS Server also allows unlimited desktop users so office staff can access the CCTV Inspections to view, edit and run reports. In addition, POSM GIS Server has the ability to be integrated with the City's ArcGIS mapping software and Central Square (Lucity) Management and Work Order systems.

Ric Gere, Staff Engineer discussed that he and staff have felt that the benefits are great from the use of POSM. Before, staff had to take a camera, put it in the sewer and then take the video and put it on a thumb drive, take it into the office and save it. Sometimes data would be lost. With POSM, there is an unlimited number of users that can use it, and then staff can do the CCTV inspections and have the information be viewable by staff in the office right after the inspection is done. Mr. Gere demonstrated for commissioners

how to view the maps and how the CCTV cameras look in the software doing through sewer pipes. He talked about how staff can see mapping of pipes and the distance of problem areas, etc. Also, Gere said that they have had excellent customer service when he has needed to contact them with questions.

Chairperson Coleman asked how this will fit in the budget. Garcia said that the software itself was not in the budget but since the city uses the software for I&I reduction, that I&I money could be used for it, but if not, the budget may have to be revised in July to account for it. Augustine asked if there is another level of software staff would need after this and Gere said not for the CCTV software and the POSM is all that is needed.

Motion by Vice-Chairperson Augustine, seconded by Commissioner Williams to consider the approval of a recommendation to the City Council to purchase POSM GIS Server software from POSM Software, LLC a one-time purchase price of \$21,500 and support at an annual cost of \$3,500 for a total amount of \$25,000 for 2022.

Motion carried 3-0 Aye

DISCUSSION ITEMS

1. Project Updates.

Director Garcia said that at the Prairie Trace development, (developed by Grata), the water lines have been completed. The city entered into an agreement with WaterOne to bring the water main from Monticello Dr. in Olathe to the development and that work is now complete. The city also installed 15-20 overhead electric poles and energized them. For sewer, the lift station at Prairie Trace is almost complete and will be commissioned during the second week of January. Now the property is served with water, sewer and electric by the City of Gardner. He stated that all of these completions are a big milestone for the city. In order for Gardner to serve that parcel with electric, Garcia said he had to petition Evergy and they granted the city the ability to service it.

Vice-Chairperson Augustine asked about the status of the smart meter project and Garcia said that the City is at 100% completion for electric smart meters as of March of 2021. At the last meeting Garcia said that he stated the city was about 99% complete on water meter installations and he said that there are still some water meters that need to be installed in Conestoga [mobile home park] and some in the schools and that there are about 40 left total to install.

Commissioner Williams asked about what the status is on providing the app for utility customers to use for the smart meters. Garcia said that the intelaHome app should be rolled out sometime in January.

Augustine said that at the last meeting that Utilities had received about 75% of backflow reports for businesses. Administrative Assistant Erin Groh said that the reports are continuing to come in but are not all received. Augustine asked if Garcia planned to present this spring a policy update change for compliance with backflows. Garcia said he will present something on it the next month or two. Augustine asked if Council had opened up the two open positions for the UAC and Garcia said that he didn't think they had interviewed anyone yet. Williams said that he thought that they had to announce that the positions were available. Chairperson Williams asked if there was any advancement or enforcement on the FOG program. Garcia said that a letter went out in December and the deadline was in mid January to comply with the FOG program. Williams asked what will happen if companies don't comply and Garcia said that enforcement will need to take place. Coleman asked about a power outage on 183rd St and Garcia said that there were about 7 customers affected and it was a failed transformer. It took three hours to identify the problem.

**RECORD OF PROCEEDINGS
OF THE UTILITY ADVISORY COMMISSION
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January 6, 2022

ADJOURNMENT

Motion by Commissioner Williams, seconded by Vice-Chairperson Augustine to adjourn the meeting at 8:19 p.m.

Motion carried 3-0 Aye

/s/ Erin Groh

Utilities Department Administrative Assistant

UTILITY ADVISORY COMMISSION STAFF REPORT NEW BUSINESS ITEM No. 1
MEETING DATE: MARCH 3, 2022
STAFF CONTACT: GONZ GARCIA, UTILITIES DIRECTOR

AGENDA ITEM: Consider implementing non-compliance penalty fees for annual backflow prevention device test.

Background:

KSA 65-171y Public water supply system regulation of lawn irrigation systems.

(a) Subject to the provisions of subsection (b), any lawn irrigation system which is not used for the application of fertilizers, pesticides or other chemicals shall not be deemed to be a high-hazard water system, and shall not be required to be equipped with a high-hazard backflow prevention device. Any such lawn irrigation system installed, renovated, replaced or extended on or after July 1, 1994, shall have at least a low-hazard double check valve assembly as a minimum level of backflow protection and any such valve on a new system installed after July 1, 1994, shall be installed in such a manner as to be easily accessible for inspection.

(b) A public water supply system operated by a city or county may impose any requirement, in addition to that provided by subsection (a), for backflow protection or prevention on lawn irrigation systems which are not used for the application of fertilizers, pesticides or other chemicals and which are connected to the public water supply system.

Municipal Code Chapter 13.10 Water Regulations

13.10.100 Protective back-flow preventers required.

Approved devices to protect against back-flow or back-siphonage shall be installed at all fixtures and equipment where back-flow or back-siphonage may occur and where there is a hazard of contamination of the potable water supply system. (Ord. 2676 § 1; Ord. 1832 § 1. Code 1990 § 15-210).

13.10.120 Protection from contaminants.

Pursuant to the authority given under Home Rule Powers and K.S.A. [65-163a](#), the City of Gardner may refuse to deliver water to any premises where a condition exists which might lead to the contamination of the public water and may continue to refuse to deliver water until the condition is corrected to the satisfaction of the City. In addition, the City may immediately terminate water service to a premises where a back-flow or back-siphonage condition exists which may be hazardous to the health of customers served by this public water supply system of the City of Gardner. (Ord. 1832 § 1. Code 1990 § 15-212)

City Compliance Process

Every year, the City mails letters to remind residential and commercial customers of the annual backflow prevention device test. The reminder is also posted on Gardner's website and quarterly letter.

The average response is as follows:

Backflow Devices	1st Letter	2nd Letter	3rd Letter	4th Letter / Call	Total
Residential -787	30%	40%	20%	10%	100%
Commercial - 232	20%	30%	25%	0%	75%

30% of residential and 50% of commercial customers do not comply with the July 1 deadline. In addition to numerous hours spent by staff for code compliance, time is spent answering calls from customers or plumbers.

In order to have all annual backflow prevention device tests done promptly, Staff proposes the following options:

Residential Customers

- 1) After the deadline has passed, have City personnel perform the testing and charge the customer \$75 on the utility bill for the testing service, or
- 2) Establish a \$75 fee for non-compliance, and \$25 for each additional month of non-compliance, or
- 3) Shut off water service, charge a \$75 penalty fee plus the \$15 reconnection fee.

Commercial Customers

- 1) After the deadline has passed, issue a citation and charge \$75 per device on the utility bill, or
- 2) Shut off water service, charge a \$75 penalty fee plus the \$15 reconnection fee.

Since most irrigation systems are in use before July 1, staff recommends the deadline be changed from July 1 to June 1 for test forms to be submitted by.

Staff Recommendation

Implement option 1 for residential and option 2 for commercial customers.

Attachments:

- a) Copies of past letters.

September 1, 2020

Re: Backflow Device Test Reports

Dear Resident,

The City of Gardner requires annual device testing for all homes and businesses with backflow prevention devices. In most cases, the backflow devices are connected to lawn irrigation/sprinkler systems to prevent backflow into the water service line. Devices are also used for fire sprinklers in buildings, carbonation machines, boilers and commercial dishwashers. The City Ordinance requires tests on all backflow devices to ensure that they are working properly. It is extremely important that all backflow devices connected to the City's water supply pass a test conducted by a certified tester.

This letter is to notify you that a Backflow Prevention Device Certification for this address, due by July 1, 2020, has not been filed with the City of Gardner Utilities Department.

An extension was given for the test to be submitted by August 21, 2020 but nothing has been received. Failure to submit a completed test form, or to contact the City of Gardner to report that you do not have a device or that the device has been cut and capped, will result in your water being shut off in September.

The City does not maintain a list of certified testers. Contact local landscapers and plumbers, or search for backflow testers online. Please have your backflow device and system tested, and have the certified examiner complete, sign, and submit a Backflow Device Test Report, which can be found on the Gardner website <http://www.gardnerkansas.gov/documents/backflow-prevention-device-test-report>. The report may be mailed to the Utilities Department, 1150 E. Santa Fe St., or e-mailed to utilities_department@gardnerkansas.gov.

- Failed tests must be fixed immediately, or the connections cut and capped.
- Device replacement for any reason requires a building permit through the Business and Development Department, and can only be replaced per City Code.
- If you no longer have an irrigation system, you will need to submit photos of the cut and capped connections to our office.

If you have general questions regarding this matter, please contact Erin Groh at 913-856-0980 or email utilities_department@gardnerkansas.gov. If you would like to speak with me directly, please call 913-856-0916 or email jlemire@gardnerkansas.gov.

Sincerely,

CITY OF GARDNER

Jeffrey LeMire, P.E.
Sr. Staff Engineer

June 8, 2021

Re: Backflow Device Test Reports

Dear Resident,

The City of Gardner requires annual device testing for all homes and businesses with backflow prevention devices. It is extremely important that all backflow devices connected to the City's water supply pass a test conducted by a certified tester annually.

This letter is to notify you that a Backflow Prevention Device Certification for this address is due by July 1, 2021.

Failure to submit a completed test form will result in your water being shut off in September.

Please have your backflow device tested, and have the certified examiner complete, sign, and submit a Backflow Device Test Report, which can be found on the Gardner website <http://www.gardnerkansas.gov/documents/backflow-prevention-device-test-report>. The report may be mailed to the Utilities Department, 1150 E. Santa Fe St., or e-mailed to: backflow@gardnerkansas.gov.

- Failed tests must be fixed immediately.
- If you no longer have an irrigation system, you will need to submit photos of the cut and capped connections to our office. Photos can be emailed to backflow@gardnerkansas.gov.

If you have general questions regarding this matter, please contact Erin Groh at 913-856-0980 or email backflow@gardnerkansas.gov. If you would like to speak with me directly, please call 913-856-0916 or email jlemire@gardnerkansas.gov.

Sincerely,

CITY OF GARDNER

Jeffrey LeMire, P.E.
Utilities Manager- Water/Wastewater

March 29, 2021

Re: Backflow Device Test Reports

Dear Business Owner,

The City of Gardner requires annual device testing for all homes and businesses with backflow prevention devices. In most cases, the backflow devices are connected to lawn irrigation/sprinkler systems to prevent backflow into the water service line. Devices are also used for fire sprinklers, carbonation machines, boilers and commercial dishwashers. The City Ordinance requires annual tests on all backflow devices to ensure the safety of the drinking water. It is extremely important that all backflow devices connected to the City's water supply pass a test conducted by a certified tester.

If you do not have a sprinkler system or are not required to have a backflow device, please call to ensure that your name and address are removed from the list.

The City does not maintain lists of certified testers. Contact a local landscaper, plumber, or search for backflow testers online. Please have your backflow device and system tested, and have the certified examiner complete, sign, and submit a Backflow Device Test Report, which can be found on the Gardner website - <http://www.gardnerkansas.gov/documents/backflow-prevention-device-test-report>. The report may be mailed or delivered to the Utilities Department, 1150 E. Santa Fe St., or e-mailed to utilities_department@gardnerkansas.gov.

The completed form must be submitted by July 1, 2021.

- Failed tests must be fixed immediately.
- Replacement of device requires a City building permit and cannot be replaced with a Double Check Valve Assembly.
- Building permits for this work are through the Planning and Zoning Department and can only be replaced per City Code.

Failure to submit a completed test form, or contact the City of Gardner to report that you do not have a device or that the device has been cut and capped, will result in your water being shut off on August 3, 2021.

Please contact Erin Groh at 913-856-0980, or myself at 913-856-0916, between 7:00 a.m. and 4:00 p.m., Monday through Friday, if you have any questions. You may also contact me via email at jlemire@gardnerkansas.gov.

Sincerely,

Jeffrey LeMire, P.E.
Sr. Staff Engineer, City of Gardner

UTILITY ADVISORY COMMISSION

STAFF REPORT

NEW BUSINESS NO. 2

MEETING DATE: MARCH 3, 2022

STAFF CONTACT: GONZ GARCIA, UTILITIES DIRECTOR

AGENDA ITEM: Consider a recommendation to City Council to award a contract to Denali Water Solutions for the Hillsdale Water Treatment Plant Waste and Residual Basin Cleanout 2022 thru 2025 Contract.

Background:

The Hillsdale Water Treatment Plant expansion was completed in 2021. With these improvements the existing residual basins were removed and two connected residual basins were built. Bids for this type of work was last advertised in 2016 for the Hillsdale Water Treatment Plant. The introduction of the new plant components will require that one of the residual basins be cleaned annually for this four year time period.

Bidding Process:

The Request for Proposals (RFP) was advertised on the City of Gardner website, Drexel website and The Legal Record, from January 11, 2022 to February 9, 2022. A total of four (4) proposals were received from contractors to perform the waste and residual basin cleanout process for the next four years. All four (4) of the proposal packages met and exceeded the requirements set out in the Request for Proposal documents, which set out the requirements for the process, method and reporting required by KDHE to perform this maintenance work.

All proposals were reviewed by Utilities department staff based on the initial costs, annual increase to costs and the total extension of the work proposal out thru 2025. The apparent low bidder for the Hillsdale WTP Waste and Residual Basin Cleanout 2022 thru 2025 was Denali Water Solutions who performed this task on one of the original residual basins during the construction of the Hillsdale WTP expansion project.

Company Name:	Base Bid	Total Bid
Denali Water Solutions	\$64,850	\$259,850.00
Nutri-Ject System, Inc.	\$117,380	\$491,074.14
Hodges Farm & Dredging, LLC	\$108,960	\$463,110.00
Sandyland Environmental Services	\$124,000	\$534,255.00

Staff and Committee Recommendation:

Consider a recommendation to City Council to award a contract to Denali Water Solutions for the total bid amount of \$259,850 for the Hillsdale Water Treatment Plant Waste and Residual Basin Cleanout 2022 thru 2025 Contract.

Attachments:

- Request For Bids
- 2022-26 Hillsdale WTP Waste and Residual Basin Cleanout Tab

City of Gardner Utilities Department



Hillsdale WTP Waste and Residuals Basin Cleanout 2022 – 2025

January, 2022

Contact Information:

Lisa Elmore
Water Plant Supervisor
(913) 856-7245

Ric Gere
Utilities Staff Engineer
(913) 568-8123



REQUEST FOR PROPOSALS

Hillsdale WTP Waste and Residuals Basin Cleanout

Issue Date: January 11, 2022

Bid Proposal Deadline: February 9, 2022 at 11:00 A.M.

The City of Gardner is seeking bid proposals from qualified Contractors for the purpose of providing the removal and disposal of wasted water and residuals from the existing holding basins located at the Hillsdale Water Treatment Plant, 22705 Moonlight Road with the intent to enter into a four year contract beginning in 2022 through 2025.

Contractor shall provide all equipment and labor required to clean out one holding basin each year of the contract. Removal of wasted water and residual material shall be accomplished using pumping equipment into vehicles suitably equipped to handle the material without leakage. If land application process is used for the disposal of residuals, the Contractor shall provide report to City complying with KDHE and USEPA regulations for land application of residuals.

The removal and disposal of all material in the holding basin for 2022 shall be completed prior to July 31, 2022. For each subsequent annual basin cleanouts the City will coordinate with Contractor when the basin is ready for cleanout. Contractor shall have work completed within 45 days after issuance of Notice to Proceed document each year.

Proposals for the **Hillsdale WTP Waste and Residuals Basin Cleanout** will be accepted until 11:00 A.M. (local time) Wednesday, February 16, 2022, at which time the proposals will be taken under advisement, and the names of respondents will be made available for public record; all other information is confidential until contract negotiations are completed.

All proposals shall be submitted digitally to the City of Gardner Utilities Department. Proposals are preferred to be submitted via email at Utilities_Department@gardnerkansas.gov. Email submittal shall have **Hillsdale WTP Waste and Residuals Basin Cleanout** in the subject line.

Proposals will also be accepted by submitting printed hard copy with a digital copy provided on USB storage device in sealed envelopes to the City of Gardner Utilities Department at 1150 E. Santa Fe Street, Gardner, Kansas, 66030. The sealed envelope for proposals shall be addressed to the City of Gardner Utilities Department, Attention: Ric Gere, marked "Proposal for: **Hillsdale WTP Waste and Residuals Basin Cleanout**."

Any proposal received after the designated closing time will not be considered.

Copies of plans and specifications can be seen or purchased for a Non-Refundable fee on-line at www.drexeltech.com in their eDistribution plan room. Additional assistance is available at Drexel Technologies; 10840 West 86th Street, Lenexa, Kansas, 66214, 913-371-4430 or by email to distribution@drexeltech.com.

Information regarding this project can be found in the "City Projects" link on the City of Gardner website at <https://www.gardnerkansas.gov/discover/about-gardner/city-projects>.

The City reserves the right to accept or reject any and all Bids and to waive any technicalities or irregularities therein. Bids may only be withdrawn or corrected pursuant to the provisions of K.S.A. 75-6902, as amended, et seq. Bids may be modified or withdrawn by written request of the Bidder if such requests are received in the office of the City Clerk, prior to the time and date for Bid opening.

This project qualifies for sales tax exemption for purchasing materials and supplies.



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WASTE AND RESIDUALS POND CLEANOUT

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INSTRUCTIONS TO PROPOSERS

Hillsdale WTP Waste and Residuals Basin Cleanout

A. General Statement:

The Proposer shall submit all proposals on the forms provided as part of these Proposal Documents and in compliance with these Instructions. All appropriate blanks shall be filled-in and the appropriate individual on behalf of him/herself or the entity submitting the proposal shall sign the Proposal.

B. Bidding Documents:

1. RFP Documents may be obtained from:

Drexel Technologies
www.drexeltech.com
10840 W. 86th Street
Lenexa, KS 66214

2. Complete sets of Proposal Documents shall be used in preparing Proposals. Proposing documents consist of the Proposal, Contract Agreement, Bid Proposal Form, any Plans or other supporting documentation.
3. Neither the CITY, nor any employee, nor any entity in contract with the CITY, assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Proposal Documents.
4. The CITY, in making copies of the Proposal Documents available on the above terms, does so only for the purpose of obtaining proposals on the Work and does not confer a license or grant for any other use.
5. Proposals shall include furnishing all labor, materials, equipment and performing the Work for the project in strict accordance with the Proposal Documents and any Addenda.

C. Inquiries:

All questions about the meaning or intent of the Contract Documents shall be made in writing through the CITY's representative specified below. Questions received less than four (4) days prior to the date for opening of bids will not be answered. Only questions answered via through an addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

All questions regarding the proposal documents and proposal should be directed in writing, via e-mail or posted mail to:

Ric Gere
Utilities Staff Engineer
(913) 568.8123
rgere@gardnerkansas.gov

D. Project Timeline:

The following dates are provided in addition to those previously stated to help interested Bidders in planning participation in the project herein. The dates listed, however, are in no way guaranteed and are subject to change without notice.

RFP Issue Date	January 11, 2022
Proposal Due Date	February 9, 2022 at 11:00 a.m.
UAC Meeting	March 3, 2022
City Council Meeting	March 21, 2022

E. Bidders Representation:

In order to induce the CITY to accept their Proposal, in addition to and not in lieu of any other representations and warranties contained in the Proposing Documents, the Proposer represents and warrants the following to the CITY:

1. The Proposer and their subcontractors are financially solvent and possess sufficient working capital to complete the Work and perform all obligations hereunder;
2. The Proposer is able to provide the tools, materials, supplies, equipment, and labor required to complete the Work and perform the Proposer's obligations hereunder;
3. The Proposer is now and will continue to be authorized to do business in the State of Kansas, and is now and will continue to be properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Proposer and over the Work and the Project;
4. The Proposal and execution of the Proposing Documents and the Proposer's performance thereunder are within the Proposer's duly authorized powers;
5. The Proposer has made an exhaustive study of the Proposing Documents; understands the terms and provisions thereof; has sought or will timely seek any and all necessary clarifications prior to submitting the Proposal and that the Proposal is made in accordance with the foregoing;
6. The Proposer has visited the project site and is completely familiar with any local and special conditions under which the Work is to be performed and has correlated such knowledge with the requirements of the Bidding Documents.
7. The Proposal is based upon the materials, systems, and equipment described in the Proposing Documents without exception;
8. The Proposer certifies that their Proposal is submitted without collusion, fraud, or misrepresentation as to other Proposers, so that all Proposals for the project result from a free, open and competitive Proposing environment;
9. The Proposer possess a high level of experience and expertise in the business administration, management, and superintendence of projects of the size, complexity, and nature of this particular project, and that the Proposer will perform the Work with care, skill and diligence of such a Contractor;
10. The Proposer acknowledges that the CITY is relying upon this Proposer's skill and experience in connection with the Work being Proposal herein;
11. That complete sets of Proposing Documents were used in preparing the Proposal and that the CITY is not responsible for errors or misinterpretations resulting from the use of incomplete sets of such documents.

F. General Instructions:

1. The foregoing warranties are in addition to, and not in lieu of (A) any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations, and performance of the Work and, (B) any and all other warranties, representations and certifications made in the Proposing Documents. The Contractor's liability hereunder shall survive the City's final acceptance of and payment for the Work. All representations and warranties set forth herein and in the Contract Documents shall survive the final completion of the Work or the earlier termination of this Agreement.
2. Any or all Proposers may be required by the City to furnish information to support the Proposer's capability to fulfill the Contract if awarded the Contract. Such information does not need to be submitted with the Bid, but may be requested at the City's option. Such information may include, but not be limited to, the following:
 - i. Proof of registration with the Kansas Director of Taxation (K.S.A. 79-1009).
 - ii. Proof of registration with the Kansas Secretary of State.
 - iii. List of projects of similar size and type the Bidder has constructed or in which the Bidder has been engaged in a responsible capacity.
 - iv. Evidence the Bidder maintains a permanent place of business.
 - v. A current financial statement.
3. Examination: Before submitting a Bid Proposal, each Proposer shall examine carefully all documents pertaining to the work and visit the site to fully inform himself of the condition of the site and the conditions and limitations under which the work is to be performed.
4. Submission of a Bid Proposal will be considered presumptive evidence that the Proposer has fully informed himself of the conditions of the site, requirements of the Contract Documents, and of pertinent national, state and local codes and ordinances, and that the Bid Proposal made allowances for all conditions, requirements and contingencies.
5. Proposer requiring clarification or interpretation of the RFP Documents shall make such requests (in writing only) of the City's Representative no less than four (4) days before the proposal submittal due date.

G. Addenda:

1. Any interpretations, corrections or changes to the Proposing Documents will be made by Addenda.
2. Written Addenda will be distributed on-line through www.drexeltech.com to all plan holders registered with Drexel Technologies.
3. Copies of written Addenda will be made available for inspection wherever Proposing Documents are on file for that purpose.
4. Addenda will be issued no later than four days prior to the opening date and time listed in the Request for Proposals, except an addendum withdrawing the request for Proposal Proposals, or one, which includes postponement of the opening date and time for receipt of Proposals.
5. Each Proposer shall ascertain prior to submitting their Proposal that he has received all written addenda issued, and he/she shall acknowledge its receipt in their Proposal.

H. Substitutions:

1. Each Proposer represents that their Proposal is based upon materials and equipment described in the Proposing documents.
2. No substitution will be considered prior to receipt of Proposals unless written request for approval has been received by the CITY.
3. If the CITY approves any proposed substitution, such approval will be set forth in addenda issued at least seven (7) days prior to the opening date for receipt of Proposals. Proposers shall not rely upon approvals made in any other manner.
4. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute including drawings, cuts, performance and test data and any other information necessary for an evaluation.
5. A statement setting forth any changes in other materials, equipment or other Work that incorporation of the substitute would require shall be included.
6. The burden of proof of the merit of the proposed substitute is upon the proposer.
7. The CITY's decision of approval or disapproval of a proposed substitution shall be final.

I. Preparation of Proposals:

1. Bids shall be made upon the form provided in these Bidding Documents.
2. All blanks must be filled in with ink or type. Blanks left on the Bid form may cause a bidder to be disqualified. The completed form shall be without alteration or erasure.
3. If a bid on all alternates is not required for alternate items, a written indication of "no Bid" on the Bid form is required.
4. Amounts shall be expressed in both words and figure, and in case of discrepancy between the two, the amount in words shall govern.
5. Sign Bid form in longhand, with name typed below signature. Where Bidder is a Corporation, Bids must be signed with the legal name of the Corporation, followed by the legal signature of an officer authorized to bind the Corporation to a contract.

J. Submission:

All proposals shall be submitted digitally to the City of Gardner Utilities Department.

Proposals are preferred to be submitted via email at Utilities_Department@gardnerkansas.gov
Email shall have **Hillsdale WTP Waste and Residuals Basin Cleanout** in the subject line.

Proposals will also be accepted by submitting printed hard copy with a digital copy provided on USB storage device in sealed envelopes to the City of Gardner Utilities Department at 1150 E. Santa Fe Street, Gardner, Kansas, 66030. The sealed envelope for proposals shall be addressed to the City of Gardner Utilities Department, Attention: Ric Gere, marked "Proposal for: **Hillsdale WTP Waste and Residuals Basin Cleanout**."

K. Modification and Withdrawal:

Proposals may only be withdrawn or corrected pursuant to the provisions of K.S.A. 75-6901, as amended, et seq.

If, within twenty-four (24) hours after bid proposals are opened, any Proposer files a duly signed written notice with CITY's Representative and promptly thereafter demonstrates to the reasonable satisfaction of CITY's Representative that there was a material and substantial mistake in the preparation of their bid proposal, that Proposer may withdraw their submitted proposal and the Bid Security will be returned. Thereafter, that Proposer will be disqualified from further submittal on the work.

L. Consideration of Proposals:

1. The CITY reserves the right to reject any and all Proposals; to waive any and all technicalities, irregularities and formalities; to negotiate contract terms with the successful Proposer; and the right to disregard all non-conforming, non-responsive or conditional Proposals.
2. In evaluating Proposals and determining the lowest responsible Proposer, CITY shall consider qualifications of the Proposers.
3. Each Proposer shall submit on a form provided for that purpose, a Statement of Proposer's Qualifications, when required by the CITY.
4. The CITY may consider the qualification and experience of Proposers and subcontractors and other persons and organizations, including suppliers, proposed to be involved in the project. Operating costs, maintenance considerations, performance data and guarantees of materials and equipment may also be considered by the CITY.
5. The CITY may conduct any such investigation it deems necessary to assist in the evaluation of any Proposal and to establish the responsibility, qualifications and financial ability of the Proposers, proposed subcontractors and other persons, organizations and suppliers, to do Work in accordance with the contract documents to the CITY's satisfaction within the prescribed time.

M. Acceptance and Award

1. The CITY reserves the right to waive all formalities and minor defects, and/or reject any and all RFPs in whole or in part with or without cause, and/or to accept the RFP that in its judgment will be in the best interest of the CITY irrespective of cost.
2. The CITY reserves the right to further negotiate details of the proposed contract with respondent to reach a contract that is mutually beneficial and meets the project needs, schedule, and budget of the CITY.

N. State of Kansas Preference

1. State law, K.S.A. 75-3740a, requires that, to the extent permitted by federal law and regulations when letting contracts for Proposals, the CITY must require any Proposer domiciled outside the state of Kansas to submit a Proposal the same percent less than the lowest Proposal submitted by a responsible Kansas Proposer as would be required of such Kansas domiciled Proposer to succeed over the Proposer domiciled outside Kansas on a like contract let in the foreign Proposer's domiciliary state.
2. All Proposers domiciled outside of the State of Kansas shall furnish CITY with a copy of their state's preferential Proposing statutes and the applicable percent received by in-state Proposers from the state in which the contract is located.

O. Subcontractors

1. The Contractor shall not award subcontracts, which total more than forty-five percent (45%) of the contract and shall perform, within its organization, work amounting to not less than fifty-five percent (55%) of the total contract price.
2. The Contractor shall submit the names of subcontractors for approval by the CITY prior to award of the contract.

P. Award of Contract:

1. The CITY shall award to the lowest and best, responsive, responsible Proposer as determined by the CITY and shall be required to enter into a contract with the CITY.
2. If the contract is awarded, the CITY will give the successful Proposer a Notice of Award within sixty (60) days after the day of the Proposal due date.
3. CITY has a standard agreement for Construction included in the Request for Proposal documents. By submitting a Bid Proposal, the Proposer acknowledges to have reviewed the terms and conditions of the agreement.

Q. Notice To Proceed:

1. No work shall commence until the City issues a Notice To Proceed, and a Notice To Proceed will not be issued until all of the following are delivered to the City.
 - i. The Contract signed by the representative with authority and ability to do so.
 - ii. Bonds with the attached powers of attorney.
 - iii. Certificate of Insurance listing the City as Additional Insured.
 - iv. Certificate of Nondiscrimination.
 - v. List of subcontractors and suppliers.
 - vi. Corporate Resolution of authority to sign and deliver the Contract Documents, executed by the Corporation's Secretary or Assistant Secretary and dated prior to all other submittals.
 - vii. Domestic (Kansas) corporations shall furnish evidence of good standing in the form of a Certificate signed by the Kansas Secretary of State.
 - viii. Foreign (non-Kansas) corporations shall furnish evidence of authority to transact business in Kansas, in the form of a Certificate signed by the Kansas Secretary of State.
 - ix. Construction schedule with major milestones.
2. Such documents must be delivered with ten (10) days of the City's written notification to the successful Proposer. If they are not delivered within such time then the Proposer will be deemed to have abandoned its contract with the City, and the City will award a contract to the next lowest and best proposal.
3. The successful Proposer shall not make claim either for time or money against the City for labor or materials performed or delivered prior to issuance of the Notice to Proceed.
4. The City's responsibility to issue a Notice to Proceed is expressly conditioned on the Contractor's timely execution and delivery prior to issuance of the Notice to Proceed.

R. Payment by City:

1. Payments by the City may be made using any of the following methods of payment, in its sole discretion:
 - i. ACH or wire transfer
 - ii. Check – checks will be mailed to the Contractor's place of business
 - iii. Credit/Purchasing Card for payments under \$1,000

2. The successful bidder will be required to submit financial information as required by the City to enable the use of the aforementioned payment methods and to enable the City to properly report such payments as required by federal law.

S. Project Completion:

Upon satisfactory completion of the Contract, a formal Certificate of Completion will be forwarded to the Contractor by the City. The date of substantial completion of the Project will be the starting date of the guarantee period.

T. Indemnity/Hold Harmless Agreement:

The Contractor agrees to protect, defend, indemnify, and hold harmless the City of Gardner and its officers, employees and agents from and against any and all losses, penalties, damages, settlements, claims, costs, charges for other expenses, or liabilities of every and any kind including attorney fees, in connection with or arising directly or indirectly out of the work agreed to or performed by Contractor under the terms of any agreement that may arise due to the bidding process. Without limiting the foregoing, any and all such claims, suits, or other actions relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged violations of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court shall be included in the indemnity hereunder.

U. Open Record:

Sealed bid proposals received by the City pursuant to this solicitation will be temporarily exempt from disclosure in accordance with the Kansas Open Records Act. Thereafter, proposals will be open for inspection by any person pursuant to the Kansas Open Records Act.

V. Taxes:

The City of Gardner, as an agency of the State of Kansas, is exempt from paying Kansas sales or use tax per K.S.A. 79-3606 (b), as well as contractors hired by the City who purchase tangible personal property for the use in constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for the City. The successful proposer shall be required to comply with K.S.A. 79-3606, as amended. The City's tax-exempt status is valid only when items purchased outside the State are delivered within the State of Kansas.

W. All Work:

Shall be in accordance with all Federal and State Laws, Local Ordinances and Building Codes, and the Americans with Disabilities Act, as amended.

TERMS & CONDITIONS

A. Bid Guarantee:

1. Bid Security is required in the amount of at least (5%) of the Bid Proposal plus all add Alternates. Bid Security can be in the form of certified or Cashier's Check or Bid Bond acceptable to the City of Gardner, Kansas. Checks are to be made payable to the City of Gardner, Kansas and drawn on a solvent Kansas bank or trust company.
2. Bid Bonds shall be written by a bonding agency approved by the United States Treasury Department and licensed to do business in the State of Kansas.
3. The amount of said Bid Security may be retained by and forfeited to the City of Gardner, Kansas as liquidated damages, if such proposal is accepted, the Contract awarded, and the Bidder fails to enter into a Contract in the form prescribed, with the required bonds, within ten (10) days after such award is made by the City of Gardner, Kansas.
4. The City of Gardner, Kansas reserves the right to retain the Bid Security of the three (3) lowest Bid Proposals until the successful Proposer has entered into an agreement or until sixty (60) days after Bid Proposal due date, whichever is the shorter period. All other Bid Securities will be returned as soon as possible.

B. Bonds:

1. Performance Bond, Maintenance Bond and Statutory Payment Bond shall be furnished to the City, by the Contractor, for all contracts over \$100,000, in an amount equal to 100 percent of the Contract sum.
2. The Statutory Payment Bond shall be filed in the office of the District Court of Johnson County. Contractor shall provide the City with a certified copy of said statutory bond as so filed.
3. Bonds furnished shall be written by a surety approved by the U.S. Treasury Department and licensed to do business in the State of Kansas. No work shall commence until bonds are in force.
4. Power of Attorney for the surety company agent must accompany each bond issued, and must be certified to include the date of the bonds.
5. Cost of the bond shall be included in the bid and paid for by the Contractor.

C. Insurance:

- ☐ Any Proposer receiving an award shall be required to provide proof of this insurance, in the form of a Certificate of Insurance, listing the City of Gardner as an additional insured. The following insurance(s) shall be required:
- ☐ Workers' Compensation and Employer's Liability – Demonstrate compliance with K.S.A. 44-532(b) including maintenance of insurance providing the statutory limits under the Kansas Workers Compensation Act; the VENDOR shall also be protected against claims for injury, disease, or death of employees, which, for any reason, may not fall within the provisions of a worker's compensation law. This policy shall include an "all states" endorsement.
- ☐ Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- ☐ Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles.

- Additional Insurance - The VENDOR shall be required to purchase an Owner's Protective Liability Insurance Policy, issued on an occurrence basis and covering bodily injury (and death) and property damage, naming the City as named insured. The liability limits shall be as stated in the Instructions to Proposers or in the Special Conditions. The original policy shall be placed on file with the City and maintained during the life of the Contract. Such policy shall contain no exclusion relative to any function performed by the City or its employees and agents in connection with the Work.
- Special Hazards - Additional insurance covering special hazards may be required on certain projects. Such additional insurance requirements shall be as specified in Instructions to Proposers or Special Conditions

D. Taxes:

It is the intent of the City to supply the Contractor with a Sales and Compensating Tax Exemption Certificate for use in purchasing materials and supplies used on qualifying projects. Qualifying projects will be identified in the Notice to Bid.

- The Contractor shall, in preparing his proposal, omit from his computed costs all sales and service taxes for qualifying projects.
- The Contractor will be furnished a copy of the Project Completion Certification.
- All invoices must be retained by the Contractor for a period of five (5) years and are subject to audit by the Kansas Department of Revenue.
- Final payment may be held by the City until the City has received the two Project Completion Certifications from the Contractor along with a Consent.

E. Term of Contract:

This contract shall commence the day after date of award by the City unless otherwise stipulated in the Notice of Award Letter. The contract shall remain in effect as reflected in the RFP documents.

F. Completion Time:

Substantial completion shall be achieved within **30 calendar days** from the date established in the Notice of Award.

Final completion shall be achieved within 7 calendar days thereafter and upon receiving punch list of incomplete items to complete the **Hillsdale WTP Waste and Residuals Basin Cleanout** as intended by the contract documents.

AGREEMENT BETWEEN CITY AND CONTRACTOR

This agreement ["Agreement"], is made as of this _____ day of _____, 2022 by and between the City of Gardner, Kansas, [hereinafter "City"], and _____ [hereinafter referred to as "Contractor"] for the construction of the following described work known as City of Gardner Project: **Hillsdale WTP Waste and Residuals Basin Cleanout.**

RECITALS

WHEREAS, the City desires to construct and complete **Hillsdale WTP Waste and Residuals Basin Cleanout.**

WHEREAS, the City has caused to be prepared, in accordance with the law, Request for Proposals, Instructions to Proposers, Bid Proposal Form, this Agreement, General and Special Conditions, Plans, Specifications and other Contract Documents (the "Contract Documents"), as defined in the General Conditions, for the work herein described, and has approved and adopted these said Contract Documents and has caused to be published, in the manner and for the time required by law, an advertisement inviting sealed Bids for furnishing construction materials, labor, tools, equipment and transportation necessary for, and in connection with, the construction of public improvements in accordance with the terms of this Agreement; and

WHEREAS, the Contractor, in response to the advertisement and Request for Proposals, has submitted to the City, in the manner and at the time specified, a Bid Proposal in accordance with the terms of this Agreement; and

WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined and canvassed the Bid Proposals submitted, and as a result of this canvass has, in accordance with the law, determined and declared the Contractor to be the lowest and best responsible bidder for the construction of the public improvements known as **Hillsdale WTP Waste and Residuals Basin Cleanout** and has duly awarded to the Contractor a contract therefore upon the terms and conditions set forth in this Agreement for the sum or sums named in the Bid Proposal Form attached to and made a part of this Agreement.

WHEREAS, in the judgment of the City of Gardner, it is necessary and desirable to employ the services of Contractor for **Hillsdale WTP Waste and Residuals Basin Cleanout.**

NOW, THEREFORE, in consideration of the compensation to be paid the Contractor, foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

- 1.0 Work to be Performed. The Contractor will furnish at his own cost and expense all labor, tools, equipment, materials and transportation required to construct and complete the work designated, described and required by the Bid Documents and Contract Documents for City of Gardner Project, **Hillsdale WTP Waste and Residuals Basin Cleanout**. All terms used herein shall have the meanings ascribed to them in the General Conditions unless otherwise specified.
- 1.1 Contractor's Work. The Work to be performed by Contractor under this Agreement is as described in the Bid Documents, attached and incorporated by reference.
- 1.2 Performance Standard. Contractor represents to City that Contractor is professionally qualified to do this Project and if required, is licensed to practice the Work being offered by all public entities having jurisdiction over Contractor and the Project. Contractor specifically acknowledges and confirms that:
- a. Contractor has visited the site, made all inspections Contractor deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by Contractor as specified herein and in the other Contract Documents and knowingly accepts same;
 - b. Contractor has furnished copies of all Contract Documents to Contractor's insurance carrier(s) and its surety(ies); and
 - c. Contractor's insurance carrier(s) and surety(ies) agree to be bound as specified in this Agreement, in the Contract Documents, as set forth in the insurance policy(ies) and bonds pertaining to liability and surety coverage.
- 1.3 Assigned Personnel.
- a. Contractor shall only assign competent personnel to perform work hereunder. In the event that at any time City, in its sole discretion, desires the removal of any person or persons assigned by Contractor to perform work hereunder, Contractor shall remove such person or persons immediately upon receiving written notice from City.
 - b. With respect to this Agreement, the Contractor shall employ the following key personnel: _____.
 - c. In the event that any of Contractor's personnel assigned to perform Work under this Agreement become unavailable due to resignation, sickness or other factors outside of Contractor's control, Contractor's shall be responsible for timely provision of adequately qualified replacements.
 - d. The Contractor shall designate _____ as Principal on the Project. As principal on this project, this person shall be the primary contact with the Project Representative and shall have authority to bind Contractor. So long as the individual named above remains actively employed or retained by Contractor, he/she shall perform the function of principal on the Project, unless otherwise agreed to in writing signed by both parties. The Contractor will supply a direct name, phone

number and email and will notify the City if this contact information changes during the contract period.

- e. City shall designate **Ric Gere, Utilities Staff Engineer** as the Project Representative to represent the City in coordinating this project with Contractor, with authority to transmit instructions and define policies and decisions of City. The written consent of the Department Director, and if applicable, City Administrator and/or Governing Body, shall be required to approve any increase in Project cost.

2.0 Commencement of Contract Time; Notice to Proceed.

- 2.1 The Contract Time will commence on the date stated in the Notice to Proceed. No Work shall be done at the site prior to issuance of a Notice to Proceed.
- 2.2 Before a Notice to Proceed will be issued, Contractor shall deliver to City certificates of insurance and such bonds as are required pursuant to the terms of this Agreement and the Contract Documents.
- 2.3 Before Contractor commences Work, a Pre-Construction Conference shall be held to review the progress schedules, to establish procedures for handling Shop Drawings and other submittals, and to establish a working understanding among the parties as to the Work to be performed pursuant to the terms of this Agreement and the Contract Documents.

3.0 Time of Performance.

- 3.1 Unless otherwise provide in this Agreement, Contractor shall commence Work upon the date stated in the Notice to Proceed, and will complete all Work covered by this Agreement and the Contract Documents within the time specified on the Notice to Proceed. Time is of the essence.
- 3.2 Progress Schedule
Within ten (10) days after the Effective Date of this Agreement and prior to commencing the Work, Contractor shall submit to City an estimated progress schedule indicating the starting and completion dates of the various phases of the Work, including the projected cost of each phase. The cost projection may serve as the basis for Progress Payments during the Work.
- 3.3 Computation of Time. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation. A calendar day of 24 hours measured from midnight to the next midnight shall constitute a day.
- 3.4 Changes in Contract Time. The Contract Time may only be changed by a Change Order. Any claim for an extension or shortening of the contract time shall be based on written notice delivered by the party requesting the change to the other party promptly and stating the general nature of the claim. A written claim with supporting data shall be delivered within thirty (30) days after such occurrence (unless the Engineer allows an additional period of time to ascertain more accurate

data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time shall be determined by the Engineer. Consideration may be given to requests for extensions of time due to inclement weather. No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph. In executing this Agreement, Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time therein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such Work, whether growing out of delays in securing materials, workers, weather conditions, or otherwise.

- 3.5 Damages for City Delay. If Contractor shall be delayed at any time in the progress of the Work by any act or omission of City or by any separate contractor employed by City, and over which Contractor has no control, then the Contract Time shall be extended by written Change Order for such reasonable time as City may decide, and no adjustment shall be made in the Contract Price.
- 3.6 Work Stoppage. Contractor warrants to City that there will be no Work stoppages or interruptions arising out of labor disputes, including, but not limited to, those due to the presence of both union and nonunion workforces at the Project site. Contractor further agrees that in the event of any strike, picket, sympathy strike, work stoppage or other form of labor dispute or picket in connection with the work of Contractor, other contractors, subcontractors, City, or any other person, Contractor will, contingent upon City providing a picket free entrance, continue to perform the Work required herein without interruption or delay.
- 3.7 Liquidated Damages.
- a. Due to the critical nature of this project, liquidated damages resulting from failure to meet the completion date, shall be charged against the Contractor at a rate of per the following schedule:

CONTRACT AMOUNT			LIQUIDATED DAMAGES
\$0	to	\$25,000	\$75
\$25,001	to	\$50,000	\$125
\$50,001	to	\$100,000	\$200
\$100,001	to	\$500,000	\$400
\$500,001	to	\$1,000,000	\$600
\$1,000,001	to	\$2,000,000	\$925
\$2,000,001	to	\$5,000,000	\$1,375
\$5,000,001	to	\$10,000,000	\$2,000
\$10,000,001	and	up	\$3,000

The amount shown above shall be the sum due for each 24-hour calendar day, including weekends and holidays, on the full bid price of the Contract for each day completion is not made in accordance with the project

schedule. The assessed amount shall be deducted from the final invoice(s).

- b. Damages are only a reasonable estimate of City's damages due to loss of public use during any delay period.
- c. The City shall have the right to deduct the liquidated damages due to the public's loss of use of the project, and the City's actual costs to continue administration of the construction and the contract, from any monies due or any monies that may become due to the Contractor.

4.0 Payment.

4.1 City agrees to pay Contractor for the actual work performed in accordance with this Agreement and the Contract Documents on the Project at the rates set forth in the Bid Proposal Form, which is attached hereto and incorporated by reference into this Agreement, the total of which shall not exceed a maximum total fee of

4.2 **\$ _____ dollars and _____ cents (\$ _____).**

4.3 Contractor shall bill City monthly for all work performed. The bill submitted by Contractor shall itemize the work for which payment is requested. City agrees to pay Contractor within thirty (30) days of approval. Contractor agrees to submit herewith such financial information as shall be required by City to enable the City to properly report such payments as required by state or federal law. City will pay or cause to be paid an amount equal to the estimated value of the Work performed less a retained amount in accordance with the following schedule:

- 1) Ten (10) percent until construction is substantially complete;
- 2) When the Work is substantially complete, the retained amount may be reduced to a lesser amount at the discretion of the Engineer.

4.4 All invoices should be sent to the Project Representative.

4.5 Right to Withhold Payment:

City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to Contractor, to protect City from loss because of:

- 1) Defective Work not remedied by Contractor nor, in the opinion of City, likely to be remedied by Contractor;
- 2) Claims of third parties against City or City's property;
- 3) Failure by Contractor to pay Subcontractors or others in a prompt and proper fashion;
- 4) Evidence that the balance of the Work cannot be completed in accordance with this Agreement for the unpaid balance of the Contract Price;
- 5) Evidence that the Work will not be completed in the Contract Time required for substantial or final completion;
- 6) Persistent failure to carry out the Work in accordance with this Agreement;
- 7) Damage to City or a third party to whom City is, or may be, liable; or
- 8) Conditions unfavorable for the prosecution of Work, or because of conditions which, in the opinion of the Engineer, warrant such action.

5.0 Substantial Completion.

- 5.1 When Contractor considers the entire Work ready for its intended use and all final restoration and testing is complete, Contractor shall notify City in writing that the entire Work is substantially complete and request that the Engineer issue a statement of Substantial Completion. Within a reasonable time thereafter, City and Contractor shall observe the Work to determine the status of completion. If City does not consider the Work substantially complete, City will notify Contractor in writing, giving its reasons therefore. If City considers the Work substantially complete, City will prepare a tentative statement of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the statement a tentative list of items to be completed or corrected before Final Payment. This list shall be called a Punch List. The statement shall state the responsibilities of City and Contractor for maintenance, utilities, damage to the Work and insurance if any of these items shall be treated differently upon Substantial Completion and shall further state the time within which Contractor shall complete the items on the Punch List attached thereto.
- 5.2 City shall have the right to exclude Contractor from the Work after the date of Substantial Completion, but City shall allow Contractor reasonable access to complete or correct items on the Punch List.

6.0 Partial Utilization of Work by City.

Use by City of any finished part of the Work, which has specifically been identified in the Contract Documents, or which City and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by City without significant interference with Contractor's performance of the remainder of the Work shall be permitted. Such use and operation shall not constitute an acceptance of the Work, and Contractor shall be liable for defects due to faulty construction until the entire Work under this Agreement is finally accepted and for a period of two (2) years or longer thereafter as stipulated in these Contract Documents or by other law or regulation.

7.0 Completion and Final Payment.

- 7.1 Upon written notice from Contractor that Work or an agreed portion thereof is complete, Engineer will make a final inspection with Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to remedy such deficiencies.
- 7.2 If a repeat final inspection(s) is required, Contractor shall bear the cost of such repeat inspection, if any, including engineering and other professional fees. After Contractor has completed all such corrections and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked-up record documents and other documents - all as required by the Contract Documents, and after Engineer has indicated that the Work is complete, Contractor may make application for Final Payment request following the procedure for progress payment requests.

- 7.3 The Final Payment requests shall be accompanied by all documentation called for in this Agreement and the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to City) of all liens arising out of or filed in connection with the Work. In lieu thereof and as approved by City, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which City or its property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to Final Payment. If any Subcontractor or supplier fails to furnish a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to City to indemnify City against any lien.
- 7.4 If, on the basis of Engineer's observation of the Work during construction and final inspection, he determines that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Final Payment certificates together with acceptance certificates will be submitted for payment.

8.0 Cash Basis and Budget Laws.

The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws, or if mill levy funds generated are less than anticipated.

9.0 Term of Agreement.

In the event that the Work rendered under this Agreement may extend beyond any one budget year, the continuation of this Agreement from year to year is contingent upon the approval of sufficient budgetary authority for the continuation of this Agreement by the governing body of the City in the establishment of its annual budget.

10.0 Warranty and Defective or Unacceptable Work.

Contractor warranties and guarantees to City that all Work will be in accordance with the Contract Documents and will not be Defective or otherwise unacceptable. All Work which does not conform to the requirements of the Contract Documents shall be considered unacceptable. Defective Work, whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause, found to exist within the two (2) year warranty period or such longer time as may be permitted by law, shall be removed immediately and replaced in an acceptable manner. This provision shall have full effect regardless of the fact that the Defective Work may have been done or the defective materials used with the full knowledge of City. No inspection by City of the Work nor Final Acceptance of the project by City shall relieve Contractor of its responsibility to perform

pursuant to the Contract Documents and provide acceptable Work. If Contractor fails to remove Defective Work within seven (7) days after written notice, the rejected material or Work may be removed and corrected by City pursuant to the provisions of the Contract Documents permitting City to correct the Defective Work.

11.0 Suspension of Work.

City may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to Contractor which shall fix the date on which Work shall be resumed. Contractor shall resume the Work on the date so fixed. Contractor will not be allowed an increase in the Contract Price or an extension of the Contract Time, if such suspension is made as a result of an act or omission of Contractor including but not limited to the occurrence of any one or more of the following events:

1. If Contractor fails to supply a qualified superintendent, sufficient skilled workmen, Subcontractors, or suitable materials or equipment;
2. If Contractor repeatedly fails to make prompt payments to Subcontractors or suppliers or for labor, materials, or equipment;
3. If Contractor disregards Laws and Regulations of any public body having jurisdiction; or
4. If Contractor otherwise violates in any substantial way any provisions of the Contract Documents, City shall have authority to suspend the Work wholly or in part, for such period of time as it may deem necessary, due to conditions unfavorable for the prosecution of the Work, or to conditions which in his opinion warrant such action, or for such time as is necessary by reason of failure on the part of Contractor to carry out orders given, or to perform any or all provisions of the Contract.

If it becomes necessary to suspend Work for an indefinite period of time, Contractor shall store all materials in such manner that they will not obstruct or impede the traveling public unnecessarily or become damaged in any way; take every precaution to prevent damage or deterioration of the Work performed; provide suitable drainage of the roadway and erect temporary structures and protective barriers where necessary. Contractor shall not suspend Work without written authority from City.

12.0 Termination.

12.1 Right of City to Terminate Contract.

- a. Without in any manner limiting the right of City to terminate the Contract or declare Contractor in default thereof for any reason set forth in this Agreement or the Contract Documents, if:
 - 12.1.a.1 the Work to be done under this Agreement shall be abandoned by Contractor; or
 - 12.1.a.2 this Contract shall be assigned by Contractor otherwise than as herein provided; or
 - 12.1.a.3 Contractor should be adjudicated to be bankrupt; or

- 12.1.a.4 a general assignment of its assets should be made for the benefit of its creditors; or
- 12.1.a.5 a receiver should be appointed for Contractor or any of its property; or
- 12.1.a.6 at any time City believes that the performance of the Work under this Contract is being unnecessarily delayed, that Contractor is violating any of the conditions or covenants of this Agreement or the specifications therefore, that it is executing the same in bad faith or otherwise not in accordance with the terms of said Contract; or
- 12.1.a.7 all bid items of the Project are not completed within the Contract Time named for their completion or within the time to which such completion date may be extended;

then, in addition to other rights City may choose to exercise, City may, at its option, serve written notice upon Contractor and its surety of City's intention to terminate this Agreement, and, unless within five (5) days after the serving of such notice upon Contractor, a satisfactory arrangement is made for the continuance thereof, this Contract shall cease and terminate.

- b. Whether or not a satisfactory arrangement has been proposed by the Contractor shall be in the sole discretion of the City. In the event of such termination, or in the event that Contractor fails to perform and abide by any obligation set forth herein in any respect, City shall immediately serve notice thereof upon the surety and Contractor, and the surety shall have the right to take over and complete the Work; provided, however, that if the surety does not commence performance thereof within fourteen (14) days from the date of said notice of termination, City may take over the Work and prosecute same to completion, by contract or otherwise, for the amount and at the expense of Contractor, and Contractor and its surety shall be liable to City for any and all excess cost sustained by City by reason of such prosecution and completion; and in such event City may take possession of, and utilize in completing the Work, all such materials, equipment, tools and plant as may be on the site of the Work and necessary therefore.
 - c. When Contractor's services have been so terminated, such termination shall not affect any rights or remedies of City against Contractor then existing or which may later accrue. Similarly, any retention or payment of monies due Contractor shall not release Contractor from liability.
- 12.2 City reserves the right, in its sole discretion and for its convenience and without cause or default on the part of Contractor, to terminate the Contract by providing written notice of such termination to Contractor specifying when such termination becomes effective. Upon receipt of such notice from City, Contractor shall: (1) immediately cease all Work; or (2) meet with City and, subject to City's approval, determine what Work shall be required of Contractor in order to bring the Project to a reasonable termination in accordance with the request of City. If City shall

terminate for its convenience as herein provided, City shall: (1) compensate Contractor for all purchased materials and actual cost of Work completed to date of termination. Contractor agrees that it shall require all its Subcontractor agreements to contain a termination for convenience provision thereby releasing Contractor from its obligations to its subcontractors should City terminate this Agreement for convenience. The provision shall also contain a waiver of liability against City in the event of such termination.

12.3 Authority to Terminate. The City Council has the authority to terminate this Agreement on behalf of the City. In addition, the City Administrator or Public Works Department Director, in consultation with the City Attorney, shall have the authority to terminate this Agreement on behalf of the City.

12.4 Right of Contractor to Terminate Contract. If, through no act or fault of Contractor, the Work is suspended for a period of more than ninety (90) days by City or under an order of court or other public authority, or City fails to act on any payment request within sixty (60) days after it is submitted, then Contractor may, upon seven (7) days written notice to City, terminate this Agreement and recover from City payment for all work executed. In addition and in lieu of terminating this Agreement, if City has failed to make any payment as aforesaid, Contractor may upon seven (7) days notice to City stop the Work until payment is made for all amounts then due. The provisions of this paragraph shall not relieve Contractor of his obligations to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with City.

13.0 Indemnification.

To the fullest extent permitted by law, with respect to the performance of its obligations in this Contract or implied by law, and whether performed by Contractor or any permitted subcontractors hired by Contractor, the Contractor agrees to indemnify and hold harmless City, and its agents, servants, and employees from and against any and all claims, damages, and losses arising out of personal injury, death, or property damage, caused by the negligent or intentional acts, errors, or omissions of the Contractor or its subcontractors. Contractor shall also pay for City's reasonable attorneys' fees, expert fees, and costs incurred in the defense of such a claim.

14.0 Bonds.

14.1 Contractor shall, after receiving Notice of Award and prior to commencing the Work, furnish to City a Statutory Payment Bond, Performance Bond and Maintenance Bond on forms approved by City and secured by a surety company acceptable to City. With each bond there shall be filed with City one copy of a "Power of Attorney" certified to include the date of the bonds.

14.2 Contractor shall notify and obtain the consent and approval of Contractor's surety for all Change Orders and written amendments, if such notice is required by Contractor's surety or by law. Contractor's execution of a Change Order or written amendments to this Agreement shall constitute Contractor's warranty to City that the surety has been notified and that the surety consents to such Change Order

or written amendment; accordingly surety shall be conclusively deemed to have been notified of such Change Order or written amendment and to have expressly consented thereto.

- 14.3 If Contractor's surety or any Bond furnished by Contractor is declared bankrupt, or becomes insolvent, or its right to do business is terminated in the State of Kansas, or it ceases to meet the requirements herein, Contractor shall within five (5) days thereafter substitute an acceptable surety and appropriate Bond.

15.0 Insurance.

- 15.1 The Contractor shall procure and maintain, at its sole expense, throughout the duration of this Agreement, insurance of such types (on an occurrence basis unless otherwise agreed to) and in at least such amounts as required herein (and not less than as required in any bid documents or other contract documents), from an insurance company licensed to do business in the State of Kansas, the following insurance coverages as may be necessary to protect the Contractor and the City and agents of the City against all hazards or risks of loss as hereinafter specified:

- ☐ Workers' Compensation and Employer's Liability – Demonstrate compliance with K.S.A. 44-532(b) including maintenance of insurance providing the statutory limits under the Kansas Workers Compensation Act; the Contractor shall also be protected against claims for injury, disease, or death of employees, which, for any reason, may not fall within the provisions of a worker's compensation law. This policy shall include an "all states" endorsement.
- ☐ Commercial General Liability for bodily injury and property damage liability claims arising from the injuries to members of the public or damage to property of others arising out of any act or omission of the Contractor or its agents, employees or Subcontractors with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The property damage liability coverage shall contain no exclusion relative to blasting, explosion, and collapse of building or damage to underground property and/or facilities.
- ☐ Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles.
- ☐ Additional Insurance - The Contractor shall be required to purchase an Owner's Protective Liability Insurance Policy, issued on an occurrence basis and covering bodily injury (and death) and property damage, naming the City as named insured. The liability limits shall be as stated in the Instructions to Bidders or in the Special Conditions. The original policy shall be placed on file with the City and maintained during the life of

the Contract. Such policy shall contain no exclusion relative to any function performed by the City or its employees and agents in connection with the Work.

- Special Hazards - Additional insurance covering special hazards may be required on certain projects. Such additional insurance requirements shall be as specified in Instructions to Bidders or Special Conditions.

15.2 Subcontractor's Insurance.

If a part of the Contract is to be sublet, Contractor shall either:

- 1) Cover all subcontractors in Contractor's general liability insurance policy;
- 2) Require each subcontractor not so covered to secure insurance in the minimum amounts required of Contractor which will protect subcontractor and the City against all applicable hazards or risks of loss as and in the minimum amounts designated for the Contractor.

15.3 The City shall be a named insured on such policies. Satisfactory certificates of insurance shall be filed with the City prior to starting any work on this Contract. The certificates shall state that thirty (30) days written notice will be given to the City before any policy coverage thereby is changed or canceled.

15.4 Industry Ratings - The City will only accept coverage from an insurance carrier who offers proof that it:

- 1) Is licensed to do business in the State of Kansas;
- 2) Carries a Best's policyholder rating of A or better;

AND

- 3) Carries at least a Class X financial rating.

OR

Is a company mutually agreed upon by the City and Contractor.

15.5 All property damaged shall be repaired or replaced to a condition immediately prior to the time of damage, and to the satisfaction of the City.

15.6 All loss or damage arising out of the nature of the work to be done, or from the action of the elements, or from floods or overflows, or from ground water, or from unusual obstructions or difficulties, or any other natural or existing circumstances either known or unforeseen, which may be encountered in the prosecution of the said work shall be sustained and borne by the Contractor at its own cost and expense.

16.0 Conflict of Interest.

Contractor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its Work hereunder, including under 31 U.S.C.S. Section 1352. Contractor further covenants that in the performance of this Agreement no person having any such interests shall be employed.

17.0 Nondiscrimination.

Contractor must comply with the Kansas Act Against Discrimination and if applicable, execute a Certificate of Nondiscrimination and Affirmative Action as provided in K.S.A. §44-1030. The Contractor further agrees that the Contractor shall abide by the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

18.0 Facilities and Equipment.

Contractor shall furnish at its own cost and expense all labor, tools, equipment, materials, transportation, and any other accessories, services and facilities required to complete the Project as designated, described in accordance with this Agreement, including any attached exhibits and any addendums to this Agreement.

19.0 Accessibility.

Contractor will comply with the Rehabilitation Act of 1973, as amended, Section 504, which prohibits discrimination against handicapped persons in employment services, participation and access to all programs receiving federal financial assistance. Contractor shall also comply with applicable requirements with the Americans with Disabilities Act (ADA), as amended, which is a federal anti-discrimination statute designed to remove barriers which prevent qualified individuals with disabilities from enjoying equal treatment by state and local governments and their agencies in employment practices and accessibility in public services and programs.

20.0 Records, Ownership and Inspection.

20.1 Ownership of Documents.

All documents prepared by Contractor in the performance of this Agreement, although instruments of professional service, are and shall be the property of City, whether the project for which they are made is executed or not.

20.2 Open Records.

In recognition of the City's obligations under the Kansas Open Records Act ("KORA"), Contractor acknowledges that this Agreement along with any reports and/or records provided pursuant to this Agreement are public documents and are subject to disclosure under KORA.

20.3 Maintenance of Records.

Except as otherwise authorized by the City, Contractor shall retain such documentation for a period of five (5) years after receipt of final expenditure report under this contract, unless action, including but not limited to litigation or audit resolution proceedings, necessitate maintenance of records beyond this five (5) year period.

21.0 Patent Fees and Royalties.

Contractor agrees to defend any claim, action or suit that may be brought against City, its governing body, officers, agents or employees for infringement of any Letters Patent of the United States arising out of the performance of this Contract or out of the use or disposal by or for the account of City of supplies furnished or Work performed hereunder, and Contractor further agrees to indemnify and hold harmless City, its governing body, officers, agents, and employees against all judgments, decrees, damages, costs and expenses recovered against it or them or sustained by it or them on account of any such actual or alleged infringement. It is understood that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment used in or furnished for the Work shall be included in the Contract Price. Final Payment to Contractor by City shall not be made while any suit or claim involving infringement or alleged infringement of any patent remains unsettled.

22.0 Independent Contractor.

It is the express intent of the parties that this Contract shall not create an employer-employee relationship. Employees of the Contractor shall not be deemed to be employees of the City and employees of the City shall not be deemed to be employees of the Contractor. The Contractor and the City shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the City's employees shall be entitled to any salary, wages, or benefits from the other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. Contractor shall also be responsible for maintaining worker's compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to its employee's compensation.

23.0 Compliance with Laws.

23.1 The Contractor shall observe and comply with all applicable federal, state, and local laws, regulations, standards, ordinances or codes and shall be in compliance with all applicable licensure and permitting requirements at all times.

23.2 Pursuant to K.S.A. 16-113, if the Contractor does not have a resident agent in the State of Kansas, it shall execute and file "Certificate of Appointment of Process of Agent" with the Clerk of the District Court of Johnson County, Kansas. These forms may be obtained at the Office of the Clerk of the District Court. Contractor shall be responsible for the filing fee. This certificate is pursuant to the General Statutes of Kansas, and shall be filed prior to the formal execution of the Contract Documents. Failure to comply with these requirements shall disqualify the Contractor for the awarding of the Contract.

24.0 Assignment.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented. In case such consent is given, Contractor shall be permitted to subcontract a portion thereof, but shall perform with its own organization, Work amounting to not less than fifty percent (50%) of the total Contract Price. The subcontracting, assignment, delegation or transfer of the Work shall in no way relieve the Contractor of its liability under this Agreement and the bonds applicable hereto.

25.0 Confidentiality.

All reports and documents prepared by Contractor in connection with the performance of this Agreement are confidential until released by City to the public. Contractor shall not make any such documents or information available to any individual or organization not employed by Contractor or City without the written consent of City before any such release.

26.0 Notices.

All notices hereunder shall be given in writing and sent as follows:

To City:

Ric Gere
Utilities Staff Engineer
rgere@gardnerkansas.gov

To Contractor:

27.0 Amendments.

27.1 This document represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, and agreements, either written or oral.

27.2 The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized by:

- a. Field Order;
- b. Engineer's review and approval of a Show Drawing or Sample;
- c. Engineer's written interpretation or clarification.

28.0 Waiver of Claims.

Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither payment of any progress or final payment by City, nor the issuance of a certificate of Substantial Completion, nor any use or occupancy of the Work or any part thereof by City, nor any act of acceptance by City nor any failure to do so, nor any correction of Defective Work by City shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents. The making and acceptance of final payment shall constitute a waiver of all claims by Contractor against City other than those claims previously made in writing against City by Contractor, pending at the time of final payment and identified in writing by Contractor as unsettled as of the time of request for final payment.

29.0 Remedies are not Exclusive.

The duties and obligations imposed by this Agreement and the rights and remedies available hereunder to the parties hereto, including, but not limited to, the warranties, guarantees and obligations imposed upon Contractor and all of the rights and remedies available to City there under, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties and guarantees made in the Contract Documents shall survive Final Payment and termination or completion of this Agreement.

30.0 No Third Party Beneficiaries.

City and Contractor specifically agree that this Agreement is not intended to create any third party beneficiary relationship nor to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement; the duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.

31.0 Force Majeure.

City shall not be responsible for any delay or failure of performance resulting from fire, flood, other acts of God, vandalism, strike, labor dispute of a third party, domestic or international unrest, delay in receipt of supplies, energy shortage or failure, or any other cause beyond its reasonable control.

32.0 Titles.

The titles in this Agreement and the Contract Documents are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

33.0 Negotiations.

City and Contractor agree that disputes relative to the project should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute Contractor shall proceed with the work as per this Agreement as if no dispute existed; and provided further that no dispute will be submitted to arbitration without both parties' express written consent.

34.0 Costs and Attorneys Fees.

If on account of a continued default or breach by either party of such party's obligations under the terms of this agreement after any notice and opportunity to cure as may be required hereunder, it shall be necessary for the other party to employ one or more attorneys to enforce or defend any of such other party's rights or remedies hereunder, then, in such event, any reasonable amounts incurred by such other party, including but not limited to attorneys' fees, experts' fees and all costs, shall be paid by the breaching or defaulting party.

35.0 Severability.

If any term or portion of this Agreement or the Contract Documents is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement and the contract Documents shall continue in full force and effect.

36.0 Authority to Enter into Agreement.

Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement and the Contract Documents. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

37. Incorporation of Appendices.

Exhibit A – Invitation for Bid for City PROJECT **Hillsdale WTP Waste and Residuals Basin Cleanout**,

Exhibit B – Contractor's Response to City PROJECT **Hillsdale WTP Waste and Residuals Basin Cleanout**;

Exhibit C – General Conditions;

Exhibit D – Special Conditions

Exhibit E – Measurement and Payment

37.0 Entire Agreement.

This Agreement and the Contract Documents represent the entire agreement between the Parties hereto and any provision not contained herein shall not be binding upon either party, nor have any force or effect.

38.0 Governing Law and Venue.

This Agreement and the Contract Documents shall be governed by the laws of the State of Kansas and, in the event of litigation, the sole and exclusive venue shall be within the District Court of Johnson County, Kansas.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this _____ day of _____, 20__.

CITY OF GARDNER, KANSAS

CONTRACTOR

(Mayor/City Administrator)

(Name, Title)

ATTEST:

City Clerk

APPROVED AS TO FORM:

Ryan Denk, City Attorney

EXHIBIT A
CITY OF GARDNER, KS REQUEST FOR BIDS
Hillsdale WTP Waste and Residuals Basin Cleanout

EXHIBIT B
CONTRACTOR'S RESPONSE TO BID
Hillsdale WTP Waste and Residuals Basin Cleanout

EXHIBIT C
GENERAL CONDITIONS
Hillsdale WTP Waste and Residuals Basin Cleanout

1.0 Contract Documents/Contract for Construction

The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the Contract Documents is to include all construction, labor, materials, tools, equipment and transportation necessary for the workmanlike construction of the project in accordance with the Contract Documents.

The Contract Documents shall consist of (but not necessarily limited to) the Agreement between the City and the Contractor (sometimes referred to herein as the "Agreement"), these General Conditions, the Special Conditions (including supplementary and other conditions), the Plans, the Specifications, all addenda issued prior to and all modifications issued after execution of the Contract (modifications consisting of written amendments to the Contract signed by both parties, change orders, written interpretations issued by the City Engineer, written orders for minor changes to the work issued by the City Engineer, and changes in the work), drawings and data which may be furnished by the Contractor and approved by the City, additional drawings which may be furnished by the Architect/ Engineer which the City Engineer deems necessary to make clear the intent of the Contract Documents (and, in particular, the Specifications), and the bidding documents. It is understood that the work shall be carried out and the project shall be constructed fully in accordance with the Contract Documents.

If there is any conflict or discrepancy between the Agreement between the City and Contractor and these General Conditions (or Special Conditions) or between the Agreement between City and Contractor and any other of the Contract Documents, the Agreement between City and Contractor shall prevail. If there is any discrepancy between the General Conditions and any other Contract Documents other than the Agreement between City and Contractor, the General Conditions shall prevail, unless such discrepancy is between the General Conditions and the Special Conditions, if any, in which case the Special Conditions shall prevail. The Contract Documents supersede all previous agreements and understandings between the parties, which previous agreements and understandings are of no further force and effect.

The Contract Documents as enumerated herein form the Contract for construction. The Contract may not be amended or modified except by a modification as hereinabove defined. These Contract Document do not, nor shall they be construed to, create any contractual relationship of any kind between the City and any subcontractor or remote tier subcontractor.

All limits stated in the Contract Documents are of the essence of the Contract. The Contract shall be construed in accordance with the law of the state of Kansas.

2.0 Definitions.

Whenever any word or expression defined herein, or pronoun used in its stead, occurs in these Contract Documents; it shall have and is mutually understood to have the meaning herein given. Work described in words which so applied have a well-know technical or trade meaning shall be held to refer to such recognized standards.

1. The "Bid" shall mean the offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the work to be performed (and the City reserves the right to reject any and all bids).
2. "Bidder" shall mean any individual: partnership, corporation, association or other entity submitting a bid for the work.
3. "Bidding Documents" shall mean all documents related to a bidder's submitting a bid, including, but not limited to, the advertisement for bids, if applicable, instructions to bidders, the bid form, other sample bidding and contract forms and the proposed Contract Documents, including any addenda issued prior to receipt of bids. At the City's option, bidder may be required to complete and submit a prequalification statement.
4. The "Bonds" shall mean the bid, performance, maintenance and statutory or labor and materials payment bonds, together with such other instruments of security as may be required by the Contract Documents.
5. A "Change Order" is a written order issued after the Agreement is executed by which the City, the City Engineer and the Contractor agree to construct additional items of work, to modify the Contract time, or, in lump sum contracts, to change the character and scope of work shown on the Contract plans, or as otherwise provided in the Contract Documents. Change Orders must be signed by the City and the Contractor to be binding.
6. "City" shall mean the City of Gardner, Kansas.
7. "City Engineer" shall mean the individual, firm or entity designated in the Contract Documents which has been employed by the City for the performance of professional engineering services in connection with the project; or shall mean the City if the City acts as its own Engineer.
8. "Contract" and "Contract Documents" shall have the meaning ascribed to them in paragraph 1, such terms sometimes being used interchangeably.
9. "Contract Price" shall be the amount identified in the Agreement between City and Contractor as the total amount due Contractor for total completion of the work as per the Contract Documents. Where the Contract provides that all or part of the work is to be unit price work the Contract Price shall initially be deemed to include for all unit price work an amount equal to the sum of the established unit prices for each separately identified item of unit price work multiplied by the estimated quantity of each item required for the work. It is understood and agreed that estimated quantities of items for unit price work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract price. Determinations of actual quantities and classifications of unit price work shall be made by the City Engineer. Each unit price shall be deemed to include Contractor's overhead and profit for each separately identified item.
10. The "Contract Time" shall be the number of calendar days stated in the Contract Documents for the completion of the work or shall be a date certain if so designated in the Contract Documents.
11. "Contractor" shall mean the entity entering into the Contract for the performance of the work covered by this Contract, together with his duly authorized agents or legal representatives.
12. "Defective Work" shall mean work which is unsatisfactory, faulty or deficient or not in conformity with the Contract Documents. It shall also include work damaged prior to approval of final payment unless responsibility for such damage shall have been expressly assumed by the City at substantial completion.
13. "Effective Date of the Agreement" shall mean the date indicated in the Agreement on which it becomes effective, but, if no such date is indicated, it shall mean the date on which the Agreement is

signed and delivered by the City to the Contractor. For this purpose, delivery shall be accomplished by either hand-delivery to the Contractor or placing a copy in the mail, first class, postage pre-paid.

15. "Final Acceptance" shall mean the date when the City Engineer accepts in writing that the construction of the project is complete in accordance with the Contract Documents such that the entire project can be utilized for the purposes for which it is intended and Contractor is entitled to final payment.

16. "General Requirements" shall mean those provisions of the Specifications which apply to the entire work.

17. "Inspector" shall mean the engineering or technical inspector or inspectors duly authorized by the City Engineer or the City.

18. "Notice of Award" shall mean the written notice by the City to the apparent successful bidder stating that upon compliance with the conditions precedent enumerated therein, within the time specified, the City will sign and deliver the Agreement.

19. "Notice to Proceed" shall mean the written notice by the City to the Contractor fixing the date on which the Contract time is to commence and on which the Contractor shall start to perform its obligations under the Contract Documents. Without the prior express written consent of the City, Contractor shall do no work until the date set forth in the Notice to Proceed.

22. "Plans" or "The Plans" shall mean and include all drawings which may have been prepared by the City and/or the City Engineer on the City's behalf as a basis for bids, all drawings (other than shop drawings, see subpart 23.) submitted by the successful bidder with its bid or by the Contractor to the City, if and when approved by the City Engineer, and all drawings submitted by the City to the Contractor during the progress of the work, all of which show the character and scope of the work to be performed.

23. The "Shop Drawing(s)" shall mean all drawings, diagrams, illustrations, schedules and other data which are specifically prepared by the Contractor, a subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distributor and submitted by the Contractor to illustrate material or equipment for some portion of the work.

24. "The Specifications" shall mean those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction methods, standards and workmanship as applied to the work and certain administrative details applicable thereto. They may include, but not necessarily be limited to:

(1) design specifications, e.g. measurements, tolerances, materials, inspection requirements and other information relative to the work;

(2) performance specifications, e.g., performance characteristics required, if any;

(3) purchase description specifications, e.g. products or equipment required by manufacturer, trade name and/or type; provided, however, equivalent alternatives (including aesthetics, warranty and manufacturer reputation) may be substituted upon written request and written approval therefor by the City in accordance with paragraph GC-58.

(4) such other information deemed appropriate by the City for inclusion in the Specifications for the proper construction of the project.

25. "Subcontractor" shall mean an individual, firm or corporation having a direct contract with the Contractor or with another subcontractor for the performance of a part of the work.
26. "The Work or "The Project" (used interchangeably) shall mean the work to be done necessary to complete the construction required of the Contractor by the Contract Documents, and includes all construction, labor , materials, tools, equipment and transportation necessary to produce such construction in accordance with the Contract Documents.
27. "Underground Facilities" shall mean all pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish services or materials including, but not limited to, electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.
29. Whenever in these Contract Documents the words "as ordered," "as directed," "as required", "as permitted", "as allowed," or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the City and/or the City Engineer is intended.
30. Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed," or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.
31. The words "approved," "reasonable," "suitable," "acceptable," "properly," "satisfactory," or words of like effect in import , unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the City and/or the City Engineer.

3.0 General Administration of the Contract.

- (a) Unless otherwise stipulated, Contractor shall provide and initially pay for all work (including labor, transportation, tools, equipment, machinery, plant and appliances) necessary in producing the results called for by the Contract Documents.
- (b) Unless otherwise specified, all supplies, materials, equipment and other facilities are guaranteed to be new and all work shall be of good quality and workmanship and free from defects or fault. Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of the work.
- (c) The Contractor shall be solely responsible for and have complete control and charge of construction means, methods, techniques, sequences and procedures, and for safety precautions and programs in connection with the work. The City shall not be responsible for nor have control or charge over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the work.
- (d) The Contractor shall, in addition to the schedule required by the Contract Documents, give to the City Engineer full information in advance as to its plans for carrying on any part of the work. If at any time before the beginning or during the progress of the work, any part of the Contractor's plant or equipment or any of its methods of executing the work, appear to the City Engineer to be unsafe, inefficient or inadequate to ensure the required quality or rate of progress of the work, the City Engineer may order the Contractor to increase or improve its facilities or methods, and the Contractor shall promptly comply with such orders; but neither compliance with such orders nor failure of the City Engineer to issue such orders shall relieve the Contractor from its obligation to secure the degree of safety, the quality of work and the rate of progress required by the Contract.

(e) The approval by the City Engineer of any plan, schedule or method of work proposed by the Contractor shall not relieve the Contractor of any responsibility therefor, and such approval shall not be considered as an assumption by the City, or any officer, agent or employee thereof, of any risk or liability, and the Contractor shall have no claim under this Contract on account of the failure or inefficiency of any plan or method so approved. Such approval shall be considered and shall mean that the City Engineer has no objection to the Contractor's use or adoption, at the Contractor's own risk and responsibility, of the plan or method so proposed by the Contractor.

(f) Any plan or method of work suggested by the City Engineer or the City to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the City Engineer and the City will assume no responsibility therefor.

4.0 Schedules.

4.1 Progress Schedule.

Within ten (10) days after the Effective Date of this Agreement and prior to commencing the Work, Contractor shall submit to City an estimated progress schedule indicating the starting and completion dates of the various phases of the Work, including the projected cost of each phase. The cost projection may serve as the basis for Progress Payments during the Work.

4.2 Adjusting Progress Schedule.

Contractor shall submit to the Engineer any adjustments to the progress schedule that reflect the impact of any unanticipated developments; such adjustments shall conform to the progress schedule and shall comply with all provisions of this Agreement.

4.3 Finalizing Schedules.

At least ten (10) days prior to submission of the first Application for Payment, a conference attended by Contractor and appropriate Subcontractors shall be held for the purpose of finalizing the progress schedule. The finalized progress schedule will be reviewed by the Engineer to ensure an orderly progression of the Work to completion within the Contract Time, but such review will neither impose on City responsibility for the progress or scheduling of the work nor relieve Contractor from full responsibility therefore. The finalized schedule of Shop Drawing submissions will be reviewed by the Engineer to ensure a workable schedule for processing the submissions.

5.0 Easements and Rights-of-Way.

If applicable, permanent and temporary construction easements and rights-of-way will be provided by City as shown on the Plans. Contractor shall confine the Work to the easements provided and shall carefully note where buildings, structures, or other obstructions will limit required working space. In the event that easements and rights-of-way are not available or are not secured, or if entry to property is denied by court order, injunction, litigation or any other reason, Contractor shall cease operations in such area and confine the Work to other areas approved by City. In the event of a delay arising from the securing of easements and rights-of-way, Contractor shall have no claim against City for damages arising from such delay but may request an extension of time pursuant to the terms of this Agreement.

When required, City shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way for access thereto, and such other lands which are designated for the use of Contractor. Easements for permanent structures or permanent changes in existing facilities will be obtained by City. If Contractor believes that any delay in City's furnishing of these lands, rights-of-way or easements entitles Contractor to an extension of the Contract Time, Contractor may make a claim for such extension. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment, not provided for in the Contract Documents. Contractor shall assume full responsibility for and indemnify City against any and all claims arising from the use of such additional lands and access.

6.0 Cutting, Patching, and Digging.

(a) Contractor shall do all cutting, fitting or patching of its work that may be required to make its several parts come together properly and fit it to receive or be received by work of others shown upon or reasonably implied by the Contract Documents.

(b) Contractor shall not endanger any property of City or any other individual or entity, or the work by cutting, digging or otherwise and shall not cut or alter the work others except with the written consent of City.

(c) Contractor shall assume responsibility for the patching or repairs, by the proper trade, of damages caused by work under this Contract.

(d) Contractor shall comply with all local ordinances dealing with cutting, patching and digging and shall obtain all necessary permits.

7.0 Use of Premises.

7.1 Throughout the duration of the Work, Contractor shall keep the Work site free from accumulations of waste materials, rubbish, and other debris resulting from the Work. At the completion of the Work, Contractor shall remove all waste material, rubbish, and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials and shall leave the Project site clean and ready for its intended use by City. Contractor shall restore to their original or better than original condition those portions of the Project site not designated for alteration by the Contract Documents.

Contractor shall confine the Work to the right-of-way limits and easements provided for the Project. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities, storage of materials, and equipment, staging area and field office. Contractor shall assume full responsibility for and indemnify City against any and all claims arising from the use of such additional lands and access.

7.2 Contractor shall not load nor permit any structure, streets or highways to be loaded with a weight that exceeds applicable load limits.

7.3 If applicable, a laydown area will be provided at the site and shall be selected by City. If required, Contractor will furnish its own dunnage and weather protection.

7.4 No City equipment will be taken out of service or put into service without approval of the Engineer.

8.0 Concealed Conditions.

8.1 City will furnish to Contractor information in its possession concerning conditions below ground at the project site. Such information is furnished to Contractor only to make complete disclosure and for no other purpose. By furnishing such information, City does not represent, warrant or guarantee the accuracy of such information, either in whole or in part, nor shall City be liable for such information.

- 8.2 Contractor understands that City does not warrant or guarantee the accuracy of the various materials and information, including but not limited to soil tests, bore reports, utility locations and other such data, and as-builts in the case of renovation of, or addition to, existing facilities. Contractor warrants that it has examined the Project site and conducted such tests and examinations as it deems necessary to perform the Work pursuant to the terms of this Agreement.
- 8.3 Should concealed or unknown conditions that differ materially from conditions ordinarily encountered in the area and generally recognized as inherent in the Work of the character provided for in this Agreement be encountered, the Contract Price may be equitably adjusted by Change Order upon written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to any possible City responsibility, Contractor shall give City written notice of, and an opportunity to observe, the concealed or unknown condition. Failure of Contractor to make the written notice and claim as required herein shall constitute a waiver by Contractor of any claim arising out of, or related to such concealed or unknown condition.
- 9.0 Reference Points, Permanent Markers and Staking.
City shall provide engineering surveys for Work for the purpose of establishing reference points which, in the judgment of the Engineer, are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for all staking of the Work, shall protect and preserve the established reference points, and shall make no changes or relocations without prior written approval of City. All staking shall be performed by a licensed surveyor. Contractor shall report to Engineer whenever any reference point is lost, destroyed, or requires relocation because of changes in grades or locations, and Contractor shall be responsible for the cost of replacement or relocation of such reference points by the Engineer, including the cost of materials, surveyors and assistance as necessary. Permanent section markers shall be replaced using recognized Kansas surveying procedures.
- 10.0 Labor, Materials and Equipment.
- 10.1 No Work shall be done between the hours of 7:00 p.m. and 7:00 a.m. nor on Saturdays, Sundays or legal holidays, without the written approval or permission of the Engineer, except such Work as may be necessary for the proper care, maintenance and protection of the Work already performed or of equipment, or in the case of an emergency. Requests for approval of such Work must be submitted to the Engineer two (2) working days prior to the requested start of such Work. Night Work may be established by Contractor, as a regular procedure, with the written permission of the Engineer, such permission however, may be revoked at any time by the Engineer.
- 10.2 Unless otherwise specified in the Contract Documents, Contractor shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities, and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work.
- 10.3 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by City, Contractor shall furnish evidence (including reports or required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable supplier, unless otherwise specifically provided in the Contract Documents.

11.0 Substitute of Equivalent Items.

- 11.1 "Approved Equal," where permitted by the Contract Documents or otherwise made feasible by market conditions, shall be approved as follows:
- a. Contractor shall notify the Engineer in writing if it elects to use an approved equal specifically named in the Contract Documents;
 - b. If Contractor desires to use an "equal" not specifically named in the Contract Documents, it must first inform the Engineer and receive written approval for such substitutions. The Engineer has no obligation to approve such request and is not responsible for any delay or cost incurred caused by Contractor's request.
- 11.2 Contractor shall be solely responsible for design risks, delays and other claims arising out of any Approved Equal. The Engineer will be allowed a reasonable time within which to evaluate each proposed substitute. The Engineer will be the sole reviewer, and no substitute "equal" will be ordered, installed, or utilized without Engineer's prior written review. City may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute "equal". Whether or not the Engineer reviews a proposed substitute "equal," Contractor shall reimburse City for the charges of the Engineer for evaluating each proposed substitute.

12.0 Safety and Protection; Notification of Property Owners/Occupants.

- 12.1 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
- a. All employees on the Project site and other persons who may come in contact with the Work;
 - b. All Work and all materials or equipment to be incorporated in the Work, whether in storage on or off the site;
 - c. Other property at the Project site or adjacent thereto, including but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of the Work.
- 12.2 Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions, or as City may determine reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the Work covered by this Agreement.
- 12.3 Contractor is fully responsible for a safety program and all safety methods and procedures, whether or not City reviewed and/or accepted such safety program.
- 12.4 City may require Contractor to notify nearby property owners or occupants of nearby structures of certain construction activities. When required, Contractor shall provide a written notice, delivered at least 24 hours in advance of such activity, to affected nearby property owners or occupants of nearby structures describing the activity and the proposed activity schedule. Delivery of the notice may be accomplished by affixing the notice to the front entrance of the structure or by mailing the notice to the property owner or occupant of the structure 3 days prior to commencing the activity.

13.0 Emergencies.

In emergencies affecting the safety or protection of persons, the Work, or property at the Project site or adjacent thereto, Contractor, without special instruction or authorization from City, is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give City prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused by such emergencies. If the Engineer determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a written Amendment or Change Order will be issued to document the consequences of the changes or variations. If City observes a situation in which it believes Contractor has not taken sufficient precaution for the safety of the public or the protection of

the Project, City may direct Contractor to take immediate action and Contractor shall immediately respond.

14.0 Shop Drawings and Samples.

Contractor shall submit with such promptness as to cause no delay in its own Work or in the Work of any Subcontractor, or other contractor, three (3) copies of all shop, fabrication, assembly, foundation and other drawings and schedules required by this Agreement. City shall review, respond to, accept or reject such submissions within a reasonable time after receipt. Contractor shall make such revisions as deemed necessary. On Final Acceptance, City shall be furnished with one copy of each drawing as finally approved, as well as a copy of preliminary or revised drawings which are approved as submitted. No Work shall be performed in connection with the fabrication or manufacture of material or equipment shown by any drawing thereof, nor shall any accessory, appurtenance or device not fabricated or manufactured by Contractor or its Subcontractors be purchased, until the drawing or drawings therefore have been approved as stipulated, except at Contractor's own risk and responsibility. Review for compliance and/or acceptance by City of drawings submitted by Contractor shall not relieve Contractor from responsibility for errors of any sort in Shop Drawings.

15.0 Relations with Other Contractors.

- 15.1 Contractor shall cooperate with all other contractors or workers who may be performing Work on behalf of City or any other entity on any Work in the vicinity of the Work to be done under this Agreement, and it shall so conduct its operations as to interfere to the least possible extent with the Work of such contractors or workers. Contractor shall be responsible for any injury or damages, including damages for delay, that may be sustained by other contractors, workers or their work because of any fault or negligence on Contractor's part, and shall at its own expense repair or pay for such injury or damage. Any difference or conflict which may arise between Contractor and other contractors, in regard to their Work, shall be adjusted and determined by the Engineer. If the Work of Contractor is delayed or damaged because of any acts or omissions of any other contractor or contractors, Contractor shall have no claim against City on that account; provided, however, City may in its discretion, grant an extension of the Contract Time.
- 15.2 When two or more contracts are being executed at one time in such manner that Work on one Contract may interfere with that of another, the Engineer shall decide which contractor shall cease work and which shall continue, whether the Work on both contracts shall progress at the same time, and in what manner the work is to proceed.
- 15.3 When the territory of one contract is the necessary or convenient means of access for the transportation or movement of men/women, materials or appliances required for the execution of another contract, such privileges of access or any other responsible privilege may be granted by City to Contractor so desiring to the extent which may be reasonably necessary.
- 15.4 In the event that Contractor is performing Work at a Project site on a Project involving City and one or more other private or governmental entities, which have their own contractors on site as well, Contractor shall advise City when it anticipates that there may be interference with the Work of any such other contractor. City shall, to the best of its ability, with input from Contractor as to coordination of the Work, seek to schedule work of the various contractors so as to avoid as much inconvenience and delay as possible; provided, however, that in the event Contractor experiences a delay as a result of the presence of other such contractors, Contractor shall not be entitled to additional compensation or damages for delay, rather, Contractor's only recourse shall be an extension of the Contract Time to be determined by the Engineer.

16.0 City's Presence During Construction.

City reserves the right to have persons present on the Project site during construction, but the presence of such persons does not relieve Contractor of its responsibility to comply with the Contract Documents.

17.0 Tests and Observations.

Contractor shall give Engineer timely notice of readiness of the Work for all required observations, tests or reviews. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) to specifically be tested, or if the Specifications require any testing or if such testing is necessary to verify compliance with the Contract Documents then Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish Engineer with the required certificates of inspection, testing or approval. Contractor shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with City's review of fabrication material, or equipment proposed to be incorporated in the Work. Neither observations by Engineer or inspections, tests or approvals by others shall relieve Contractor from his obligations to perform the Work in accordance with the Contract Documents.

18.0 Inspection of the Work.

(a) City Engineer shall at all times have access to the Work for the observation and inspection thereof wherever it is in preparation or progress, and Contractor shall provide proper facilities for such inspection. The Contractor shall furnish all reasonable aid and assistance required for any such inspection.

(b) All work must be inspected, tested, or approved and the Contractor shall give the City Engineer timely notice of its readiness for such inspection, testing or approval and the date fixed for such inspection, testing or approval if the inspection, testing or approval is by an authority other than City Engineer. If any work should be covered up which is required by the above to be inspected, tested or approved and which, by virtue of being so covered up, is not susceptible to being properly inspected, tested or approved, Contractor shall, if requested by City Engineer, uncover such work and at Contractor's expense bear the cost of uncovering such work and redoing same after inspection, testing or approval and redoing such other work damaged as a result of having to uncover and redo same.

(c) City Engineer reserves the right to inspect any and all work before it is covered up; and, accordingly, Contractor must notify City Engineer before covering any work.

City Engineer shall be given a reasonable time to make its inspection. Contractor shall not cover any work prior to City Engineer having a reasonable time to inspect. If work to be covered does not conform to the Contract Documents, City Engineer can withhold its consent to covering up work until such work is made to conform at Contractor's expense.

(d) If any labor, supplies, materials or equipment are found not to be in accordance with the Contract Documents, Contractor shall at his own expense bear the cost of uncovering such labor, supplies, materials or equipment, the cost of removing same, as well as the cost of undoing and redoing the work and other work damaged by such nonconforming labor, supplies, materials or equipment.

(e) The Contractor shall comply with the directions and instructions of the City Engineer.

(f) The City, the City Engineer and all designated inspectors shall be free at all times to perform their duties, including the observation and inspection of the work, and intimidation or attempted intimidation of any one of them by the Contractor or by any

of its employees shall be sufficient reason, if the City so desires, to terminate the contract.

(g) Any inspection, by whomsoever conducted, shall not relieve the Contractor from any obligation to perform the Work strictly in accordance with the plans and specifications, and any of the Work not so constructed shall be removed and made good by the Contractor at its own expense.

19.0 Uncovering Work.

If any Work that is included in the Contract (including the work of others) that is to be observed or tested is covered without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation. Such uncovering shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover such work and Engineer has not acted with reasonable promptness in response to such notice.

20.0 Street Signs and Traffic Aids; Designation and Maintenance of Haul Roads.

20.1 Contractor shall be responsible for all preexisting traffic control devices at the project site, including installation, maintenance, removal and storage of such devices. All temporary and permanent traffic control devices supplied by Contractor shall comply with and be installed in accordance with the Manual on Uniform Traffic Control Devices (MUTCD), current edition as revised, and the Traffic Control Devices Handbook both by the U.S. Department of Transportation and the Federal Highway Administration.

20.2 City may require Contractor to designate and maintain one or more "Haul Roads" for the purpose of transporting materials and debris to and from the Project site. When required, Contractor shall maintain the designated haul road(s) to the level of maintenance and appearance present before commencement of the Work, as documented by photographs or videotape.

21.0 Permits.

Contractor shall obtain and pay for all construction permits and licenses unless otherwise stated. City shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening Bids, or if there are no Bids on the Effective Date of this Agreement. Contractor shall pay all charges of utility service companies for connections to the Work.

22.0 Acceptance of Defective Work. If, instead of requiring correction or removal and replacement of Defective Work as provided for in the Agreement and Contract Documents, City prefers to accept the Defective Work, City may do so. Contractor shall bear all direct, indirect and consequential costs attributable to City's evaluation of and determination to accept such Defective Work (such costs to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such review occurs prior to City's approval of Final Payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and City shall be entitled to an appropriate decrease in the Contract Price; and, if the parties are unable to agree as to the amount thereof, City may make a claim therefore. If the review occurs after such recommendation, an appropriate amount will be paid by Contractor to City.

23.0 Defects in Contract Documents. If Contractor has reasonable cause such that it should, in the exercise of ordinary care of someone in its position, know that any errors, omissions, discrepancies or inconsistencies (hereinafter "defects") appear in the Contract Documents, including but not limited to, the Plans, Specifications and other documents or the work, Contractor shall notify the City Engineer in writing of such defects. Contractor shall remedy any such defects whether or not disclosed to the City Engineer without any increase in the cost of the work. The Contract Documents shall be appended to all contracts between the Contractor and any subcontractor or any more remote tier subcontractor, and such subcontractors and remote tier subcontractors shall, likewise, notify the Contractor in writing

of any defects therein, and it shall be the obligation of the Contractor to remedy same as if Contractor had discovered such defects itself. The Contractor will not be permitted to take advantage of any such defect.

24.0 Federal Lobbying Activities. 31 U.S.C.S. Section 1352 requires all subgrantees, contractors, subcontractors and consultants who receive federal funds via the City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan or cooperative agreements. In addition, contract applicants, recipients and subrecipients must file a form disclosing any expenditures they make for lobbying out of non-federal funds during the contract period. Necessary forms are available from the City Engineer and must be returned to the City with other contract documents. It is the responsibility of the Contractor to obtain executed forms from any Subcontractors who fall within the provisions of the Code and to provide the City with the same.

25.0 Changes in the Work.

(a) Change Orders. City, without invalidating the Contract, may by Change Order direct changes in the Work which may result in an addition to or deduction from the Contract price and/or changes in the Contract time. All Change Orders shall be executed under the provisions of the original Contract Documents. If the Change Order consists of a modification to the Contract Price, the value of such change shall be determined as per paragraph (e) below. Except for work done as a result of an emergency endangering life or property, no work resulting in an additional pay item shall be performed unless pursuant to the provision of a Change Order.

(b) Quantity Variations. Where changes in the work involve a change in the quantity of any bid item, the Contract Price shall be revised by extension of the quantities and unit price of all bid items so changed subject to written approval of the City Engineer.

(c) Field Orders. City Engineer may order minor changes in the Work through field orders, which in no specific, concrete or substantial way increase or decrease the Work; and such minor changes in the Work shall not involve an addition or deduction from the Contract Price.

(d) From time to time the City Engineer may also issue written orders to Contractor for needed clarifications, modifications or corrections. Should a difference of opinion arise as to whether the order constitutes extra work for which additional compensation is due, and the City insists on its performance, the Contractor shall proceed with the work after making a written request for a Change Order, and it shall keep an accurate account of the actual field cost thereof as provided for in (e)(3) below. The Contractor will thereby preserve the right to submit a claim therefor. The failure of Contractor to make a written request for a Change Order shall operate as a waiver of any such claim.

(e) The value of any change in the Work which results in an addition/deletion to the Contract Price shall be determined in one or more of the following ways, at the option of City:

- (1) By agreed lump sum.
- (2) By unit prices named in the Contract or subsequently agreed upon.
- (3) By actual, documented field cost (time and material) plus fifteen percent (15%) and shall include a "Not to Exceed" figure.

In order to arrive at the value for any change, Contractor shall credit City with its projected cost(s), including overhead and fee for any work which was previously included but which has been excluded by any such change.

(f) No change in the Work shall entail additional time unless the City Engineer determines that additional time is required and specifically so provides in the Change Order. No change in the Work shall entitle the Contractor to delay damages.

(g) Where extra work is performed under (e)(3) above, the term "actual field cost" of such extra work is hereby defined to be and shall include:

- (1) The cost of all workers, such as foremen, timekeepers, mechanics, and laborers, for the time actually employed in the performance of the said extra work;
- (2) All materials and supplies;
- (3) Trucks and rental on machinery and equipment for the time actually employed or used in the performance of said extra work;
- (4) Any transportation charges necessarily incurred in connection with said equipment authorized by the City Engineer for use on said work and similar operating expenses;
- (5) All incidental expenses incurred as a direct result of such extra work, including payroll taxes and a ratable proportion of premiums on construction bonds and, where the premiums therefor are based on payroll costs, public liability and property damage, worker's compensation, and other insurance required by the Contract; provided, however, Contractor must enumerate and justify to City's satisfaction any such claimed incidental expenses; and provided, further, that without in any way limiting City's right to challenge any individual costs claimed by Contractor, incidental costs shall not include:
 - (a) Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the site or in Contractor's principal or a branch office for general administration of the work unless specifically agreed to by City - all of which are to be considered administrative costs covered by the Contractor's overhead and profit.
 - (b) Expenses of Contractor's principal and branch offices other than Contractor's office at this site.
 - (c) Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the work and charges against Contractor for delinquent payments.
 - (d) Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective work, disposal of materials or equipment wrongly supplied and making good any damage to property.
 - (e) Other overhead of general expense costs of any kind and the costs of any item not specifically and expressly agreed to by City.

The City Engineer may direct the form in which accounts of the actual field cost shall be kept and may also specify in writing, before the work commences, the method of doing the work and the type and kind of machinery and equipment, if required, which shall be used in the performance of extra work under (e) (3) above. In the event that machinery and heavy construction equipment shall be required for such extra work, the authorization and basis of payment for the use thereof shall be stipulated in the written extra work order.

The fifteen percent (15%) of the actual field cost to be paid to the Contractor shall cover, and be full compensation for, the Contractor's profit, overhead, general superintendence, field office expense and all other elements of cost not embraced within the "actual field cost" as herein defined.

(h) In the event that unit prices are provided for in the Contract Documents as to all or a part of the work, if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of work proposed is substantially inequitable to either the City or the Contractor, the unit prices shall be reevaluated and adjusted in accordance with the following:

(1) If the total cost of a particular item of Unit Price Work amounts to twenty (20) percent or more of the Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by Contractor differs by more than thirty-three (33) percent from the estimated quantity of such item indicated in the Contract; and

(2) If there is no corresponding adjustment with respect to any other item of work; and

(3) If Contractor has incurred additional expense as a result thereof; or

(4) If City believes that the quantity variation entitles it to an adjustment in the unit price and, the parties are unable to agree as to effect of any such variations in the quantity of Unit Price Work performed;

then either City or Contractor may request the City Engineer to make an adjustment in the Contract Price.

(i) No claim for extra work of any kind will be allowed except as provided herein. If extra work orders are given in accordance with the provisions of this Contract, such work shall be considered a part hereof and subject to each and all of the terms and requirements of this Contract.

(j) Contractor shall be responsible for notifying his surety(ies) of any modifications to the Contract Price or Time, and said surety(ies) shall not seek discharge as a result of any failure on Contractor's part to notify surety(ies).

26.0 Contractor's Risk. The Contractor shall assume full responsibility for the Work and shall bear any loss and repair any damage at his/her own cost occasioned by neglect, accident, vandalism or natural cause, whether foreseen or unforeseen, during the progress of the Work and until the Work is completed and accepted by the City.

27.0 Sanitary Regulations and Water. The operations of the Contractor shall be in full conformity with all of the rules and regulations of boards and bodies having jurisdiction with respect to sanitation. The Contractor shall supply safe and sufficient drinking water to all of its employees. The Contractor shall obey and enforce all sanitary regulations and orders, and shall take precautions against infectious diseases and the spread of same. All water used in the course of the Work shall be hauled in or purchased from the local Water Company's distribution system at the Contractor's own cost and expense.

28.0 Protection of Property/Liability. Without in any manner limiting Contractor's responsibilities as provided elsewhere in the Contract Documents, the Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers and utilities, both above the ground and underground facilities, along, beneath, above, across or near the site or sites of the work being performed under this Contract, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connections therewith. Barriers shall be kept placed at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.

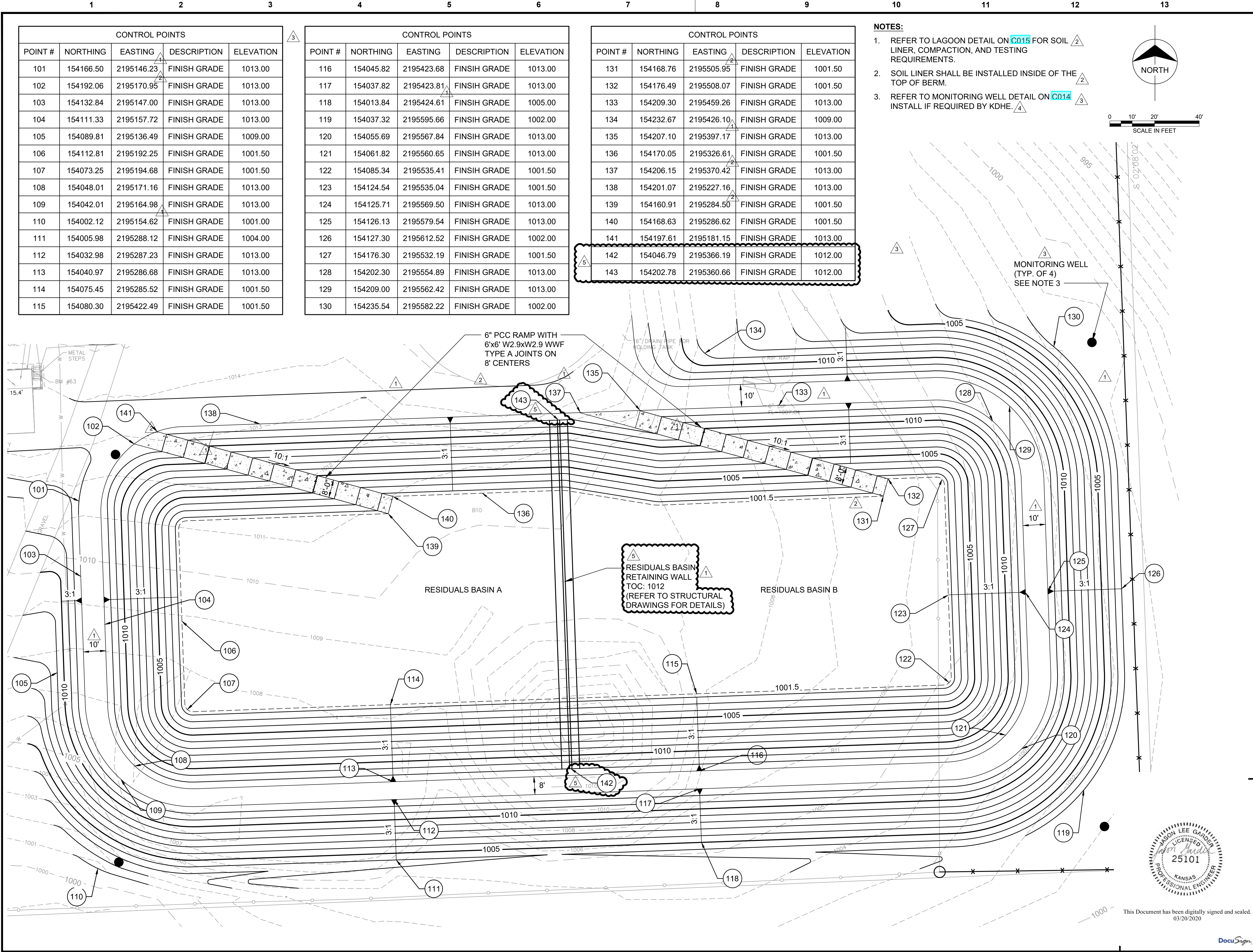
The Contractor shall give reasonable notice to the affected owner or owners when any such property is liable to injury or damage through the performance of the Work and shall make all necessary arrangements with such owner or owners relative to the removal and replacement or protection of such property and/or utilities.

The Contractor shall satisfactorily shore, support and protect any and all structures and all excavations, pipes, sewers, drains, conduits and other facilities and shall be responsible for any damage resulting thereto. The Contractor shall not be entitled to any additional time nor damages or extra compensation on account of any postponement, interference or delay caused by any such structures and facilities being on the line of the Work, whether they are shown on the plans or not, specifically including, but not limited to, damages due to delay in utility relocation.

APPENDIX D
SPECIAL CONDITIONS
Hillsdale WTP Waste and Residuals Basin Cleanout

GENERAL ITEMS

- SC-1 Per Article 3.0 of the Contract Agreement, there are **45 calendar days** provided from the issuance of the Notice to Proceed each year of the contract to substantial completion.
- SC-2 Restoration of street surface, parkway/lawn areas and all other areas abutting the construction, shall be subsidiary to other items in the project.
- SC-3 Contractor will also be responsible for repair or reconstruction of any utilities cut or damaged during construction. Restored parkway/lawn areas shall be seeded. The base of each basin shall not be sodded, nor seeded.
- SC-4 Traffic Control:
- SC-4.1 The Contractor shall supply flag person, signs, etc. to control traffic through the work zone if and when deemed necessary by the Project Representative. All traffic control shall conform to Chapter VI of the M.U.T.C.D. Access for local traffic shall be maintained at all times, and shall be included in the lump sum price bid for "Traffic Control".
- SC-5 All construction traffic of trucks and equipment shall **only enter and exit** the plant entrance from the North along Moonlight Road. No entering or exiting the plant with construction activity to the South will be allowed.
- SC-6 Contractor shall schedule and coordinate basin cleanout activities with Hillsdale WTP Staff.
- SC-7 Construction shall be in accordance with the City of Gardner Technical Specifications for Public Improvement Projects, latest edition.
- SC-8 Approximately 4,700 CY of material to be removed from the a single residuals holding basin each year. The two basins shall be cleaned out alternating years. The holding basin locations are shown on map included as Attachment A.
- 2022 & 2023 - West Residuals Holding Basin A
 - 2023 & 2025 – East Residuals Holding Basin B
- SC-9 The City of Gardner NPDES permit is included as Attachment B with Land Application of Residuals referenced in Section F, beginning on page 4 of 10. Contractor shall provide report to City complying with KDHE and USEPA regulations for land application of residuals.



- NOTES:**
1. REFER TO LAGOON DETAIL ON **C015** FOR SOIL LINER, COMPACTION, AND TESTING REQUIREMENTS.
 2. SOIL LINER SHALL BE INSTALLED INSIDE OF THE TOP OF BERM.
 3. REFER TO MONITORING WELL DETAIL ON **C014** INSTALL IF REQUIRED BY KDHE.

no.	date	by	ckd	description
0	10/2/19	IWC	JLG	ISSUED FOR CONSTRUCTION
1	11/4/19	IWC	JLG	CIVIL PACKAGE REVISED
2	11/15/19	IWC	JLG	CIVIL PACKAGE REVISED
3	11/22/19	IWC	JLG	REVISED LAGOON GRADING
4	12/26/19	IWC	JLG	CIVIL PACKAGE REVISED
	1/20/20	IWC	JLG	ISSUED FOR CONSTRUCTION
5	3/20/20	IWC	JLG	REVISED RETAINING WALL

BURNS MEDONNELL
9400 WARD PARKWAY
KANSAS CITY, MO 64114
816-333-9400
LICENSE NO. E-65

CASCONSTRUCTORSLLC
AN ALBERICI ENTERPRISE

date	May 1, 2019	detailed	I. CAUBLE
designed	W. RILEY	checked	J. GARDER

GARDNER KANSAS

JOHNSON COUNTY, KANSAS

HILLSDALE WTP EXPANSION

GRADING PLAN
SOUTHEAST

project	115493	contract	
drawing	C006	rev.	5
sheet	-	of	-
file	115493-C006.DWG	sheets	

ATTACHEMNT B
City of Gardner, KS 2020 NPDES Permit

Division of Environment
Curtis State Office Building
1000 SW Jackson St., Suite 400
Topeka, KS 66612-1367



Phone: 785-296-1535
Fax: 785-559-4264
www.kdheks.gov

Lee A. Norman, M.D., Secretary

Laura Kelly, Governor

September 29, 2020

City of Gardner
Gonzalo Garcia
120 Main Street
Gardner, KS 66030

RE: Kansas Water Pollution Control
Permit No. I-MC60-PO02
Hillsdale Water Treatment Plant

Dear Permittee:

You have fulfilled all the filing requirements for a Kansas Water Pollution Control Permit and Authorization to Discharge under the National Pollutant Discharge Elimination System (NPDES). We are pleased to forward your new permit. While it is permissible to make as many copies as needed for monitoring and reporting purposes, you need to retain the original permit for your files.

We suggest you carefully read the terms and conditions of your permit and understand these terms and conditions are enforceable under both State and Federal law.

Please note the reporting paragraph on page 2 of your permit. If required, all discharge monitoring reports are to be processed by the eDMR software program. If KDHE has not contacted you concerning the use of the eDMR software program, please contact Debbie Mendenhall at 785.296.5561 or Deborah.Mendenhall@ks.gov. If this requirement applies to your facility, please share this permit with your certified operator and laboratory.

Any additional reports shall be submitted to the Kansas Department of Health and Environment, Bureau of Water-TSS, 1000 SW Jackson St., Suite 420, Topeka, Kansas 66612-1367.

If you have any questions concerning this permit, contact Michael Beezhold at (785) 296-5513.

Sincerely,

Thomas C Stiles
Director, Bureau of Water

pc: NE - District
PJ- Permit File

**KANSAS WATER POLLUTION CONTROL PERMIT AND
AUTHORIZATION TO DISCHARGE UNDER
THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

Pursuant to the Provisions of Kansas Statutes Annotated 65-164 and 65-165, the Federal Water Pollution Control Act as amended, (33 U.S.C. 1251 et seq; the "Act"),

Owner: City of Gardner

Owner's Address: 120 Main Street, Gardner, Kansas 66030

Facility Name: Hillsdale Water Treatment Plant

Facility Address: 22705 Moonlight Drive, Spring Hill, Kansas 66083

Outfall Legal: SW¼, Section 30, Township 15S, Range 23E of Miami County, Kansas

Feature Name	Latitude	Longitude
Facility Center	38.71568	-94.90584
Outfall	38.71617	-94.90630

Receiving Stream: Marais des Cygnes River via Hillsdale Lake via Branch of Little Bull Creek via Unnamed Tributary

Basin: Marais des Cygnes River Basin

is authorized to discharge from the water treatment facility described herein, in accordance with effluent limitations and monitoring requirements as set forth herein.

This permit is effective October 1, 2020 supersedes the previously issued Water Pollution Control permit I-MC60-PO02 and expires September 30, 2025.

FACILITY DESCRIPTION: This is an existing water treatment plant with a design flow of 4.0 MGD that treats water from Hillsdale Reservoir. The treatment process is being expanded to a capacity of 6.0 MGD. The expansion includes a new carbon contact basin which will replace the existing carbon contact basins. Following the carbon contact basin, the flow will be split to the existing WTP treatment train or to the new treatment train. The new treatment train consists of a solid contact clarifier for flocculation and sedimentation, dual-media gravity filtration and transfer pumping facilities.

Raw water from Hillsdale Reservoir is mixed with sodium permanganate at the intake. Powdered Activated Carbon (PAC) will be fed at carbon contact basin ahead of clarification. Primary treatment is used to remove turbidity and organics prior to filtration. An upflow solids contact clarifier (SCC) provides mixing, flocculation and sedimentation. Clarification residuals will be discharged to the lagoons for on-site storage. Dual media gravity filters will be used for the filtration. Filter to waste and backwash waste will be air gapped within the filter building and will be discharged to the lagoons. Primary disinfection will be achieved with free chlorine and secondary disinfection will be achieved with chloramines. The existing chlorine contact basin will be used for primary disinfection. An additional 1 MG clearwell is proposed for additional finished water storage; the new clearwell will operated in parallel to the exiting 1 MG clearwell.



Secretary, Kansas Department of Health and Environment

September 28, 2020
Date

FACILITY DESCRIPTION (Contd.):

The water treatment plant has two existing lagoons that collect clarification residuals, filter backwash waste and filter to waste streams. Domestic waste will continue to be discharged to the existing septic system. Clarification residuals, backwash residuals and filter to waste will flow by gravity to the lagoons. Pulsating clarifier blowdown and basin drain, will flow to the existing sludge pump station and then to the lagoons. Outfall 001A1 and 001Q1 are same outfall.

A. EFFLUENT LIMITS AND MONITORING REQUIREMENTS

The permittee is authorized to discharge from outfall(s) with serial number(s) as specified in this permit. Such discharges shall be controlled, limited, and monitored by the permittee as specified. There shall be no discharge of floating solids or visible foam in other than trace amounts.

The monitoring reports shall be submitted monthly on or before the 28th day of the following month. In the event no discharge occurs, written notification is still required.

Outfall/Monitoring Point # Effluent Parameter(s) Units	<u>EFFLUENT LIMITATIONS</u> <u>Final Upon Issuance</u>	<u>MONITORING</u> <u>REQUIREMENTS</u>	
	Daily Maximum	Measurement Frequency	Sample Type
<u>Outfall 001A1 (EDMR code: EFF001A1) – Wastewater Treatment Lagoon Effluent</u>			
Flow	Monitor	Weekly	Flowmeter/Totalizer
Total Residual Chlorine- µg/l	21*	Monthly	Grab
Total Suspended Solids -mg/l	100	Monthly	Grab
pH - Standard Units	Between 6.0 - 9.0	Monthly	Grab

Outfall 001Q1 (EDMR code: EFF001Q1) – Wastewater Treatment Lagoon Effluent

Nitrate & Nitrite as N – mg/l	Monitor	Quarterly	Grab
Total Kjeldahl Nitrogen (TKN) as N–mg/l	Monitor	Quarterly	Grab
Total Nitrogen as N (NO3+NO2 +TKN)	Monitor	Quarterly	Calculated
Total Phosphorus as P – mg/l	Monitor	Quarterly	Grab

* Permittee shall conduct testing for total chlorine residual according to the methods prescribed in 40 CFR Part 136. The current acceptable quantification level for total residual chlorine in wastewater is 100 micrograms/L. Test results in excess of the 100 ug/l quantification level are violations of the permit limit.

B. STANDARD CONDITIONS

In addition to the specified conditions stated herein, the permittee shall comply with the attached Standard Conditions dated March 1, 2018.

C. SCHEDULE OF COMPLIANCE

None

D. ADDITIONAL INFORMATION

EPA has promulgated a final rule requiring regulated entities to report DMR data electronically. Also, KAR 28-16-63 requires permittees to report NPDES data in a form required by KDHE. KDHE has developed electronic reporting tools to assist permittees in complying with the EPA electronic reporting rule and KAR 28-61-63. Unless a waiver has been approved by KDHE, permittees are required to submit reports electronically.

E. SUPPLEMENTAL CONDITIONS

1. This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under Sections 301(b)(2)(C) and (D), 304(b)(2) and 307(a)(2) of the Clean Water Act, if the effluent standard or limitation so issued or approved:

- a. Contains different conditions or is otherwise more stringent than any effluent limitation in the permit, or
- b. Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.

2. Changes in Discharges of Toxic Substances

The permittee shall notify KDHE as soon as it knows or has reason to believe:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

- (1) One hundred micrograms per liter (100 µg/l);
- (2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
- (3) Five times the maximum concentration value reported for that pollutant in the permit application.

- b. That any activity has occurred or will occur which result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit if that discharge will exceed the highest of the following notification levels:

- (1) Five hundred micrograms per liter (500 µg/l);
- (2) One milligram per liter (1 mg/l) for antimony;
- (3) Ten times the maximum concentration value reported for that pollutant in the permit application.

3. Land application of the residuals is authorized by this permit. Please see Section F for the land application requirements. Land application plan shall be developed and submitted to KDHE-BOW for approval before the land application of the wastewater residuals.

F. LAND APPLICATION OF THE RESIDUALS

1. GENERAL WASTEWATER RESIDUALS LAND APPLICATION REQUIREMENTS:

Land application of wastewater residuals is acceptable in areas approved by KDHE during favorable weather conditions. The land application shall be conducted in accordance with generally accepted agricultural practices, at agronomic application rates, and in such a manner as to prevent nuisance conditions from developing. The following conditions shall apply to the land application of wastewater residuals:

- a. Application shall be controlled to prevent runoff to surface waters.
- b. Wastewater residuals shall not be applied onto crop land used to produce crops for direct human consumption.
- c. Wastewater residuals shall not be applied within a 100 foot radius of the facility's water supply well or property line, within 200 feet of an off-site water well, within a 500 feet radius from a habitable structure or on an area that floods more frequently than once in ten years.
- d. Accurate records of the wastewater residuals land application operation shall be maintained and made available to KDHE upon request.
- e. Wastewater residuals shall not be land applied on saturated, frozen, or snow-covered ground.

2. WASTEWATER RESIDUALS MONITORING:

A representative sample of wastewater residuals to be land applied shall be analyzed for parameters specified as follows to determine the application rates:

pH (standard units)	Total Phosphorus (mg/kg)
Total Kjeldahl Nitrogen (mg/kg)	Nitrate-Nitrogen (mg/kg)
Ammonium-Nitrogen (mg/kg)	Total Potassium (mg/kg)
Percent solids	Chloride (mg/kg)
Phosphate as P ₂ O ₅ (lb/ton)	Potash as K ₂ O (lb/ton)
Total metals (mg/kg)	
(Arsenic, Cadmium, Copper, Lead, Mercury, Molybdenum, Nickel, Selenium, and Zinc)	

Phosphorus as "P" using the Bray P-1 or Mehlich 3 analysis method shall be limited to 200 mg/kg in the top 6 inches of soil if the slope of the land application site is less than 5%. If the slope of the land application site is greater the 5%, the maximum phosphorus as "P" soil concentration using the Bray P-1 or Mehlich 3 analysis method shall be 150 mg/kg.

3. SOIL MONITORING:

Prior to land application of wastewater residuals, the following soil samples shall be taken annually (usually following harvest) before annual wastewater residuals application begins. Samples must be tested at a laboratory skilled in the testing of soil samples for agronomic purposes and interpretation of soil sample test results. Permittee should consult the county extension office for guidance on sampling, testing and suitable laboratories. These laboratories need not be KDHE-certified for these tests.

- f. At least ten - 6-inch-deep core samples from each land application site; composite all cores from that site into one sample. (If the land application site is less than 10 acres, a minimum of 1 core per acre). The top core composite sample shall be analyzed for the following parameters:

pH (standard units)
Exchangeable Ammonium as Nitrogen (ppm and lb/acre)
Nitrate-Nitrogen (ppm and lb/acre)
Total Nitrogen (ppm and lb/acre)
Melich-3 or Bray P-1 Extractable Phosphorus (ppm)
Extractable Potassium (ppm)
Extract Electrical Conductivity(mmhos)
Exchangeable Sodium as percent of cations (%)
Sodium Adsorption Ratio (unitless)
Soluble Chloride (ppm)
Total metals (ppm and lb/acre)
(Arsenic, Cadmium, Copper, Lead, Mercury, Molybdenum, Nickel, Selenium, and Zinc)

- g. From the same core holes, take a second sample (6 inch to 24-inch-deep or as deep as you can go but not more than 24 inches) and composite these cores into one sample. The bottom core composite sample shall be analyzed for nitrate nitrogen (ppm and lb/acre).

4. ANNUAL WASTEWATER RESIDUALS LAND APPLICATION REPORT:

By March 1 of each year, permittee shall submit a wastewater residuals land application annual report. The report shall address information from the previous calendar year wastewater residuals land application and a plan to land apply the wastewater residuals for the upcoming calendar year. At a minimum the report shall include the following:

- a. A topographical map including the location of the land application sites, number of acres available at each land application site, location of any water wells within 500 feet of the land application sites. If the land application sites are less than 100 feet from the property line or less than 500 feet from any residences, waivers must be obtained from the owners to allow land application on these areas.
- b. The quantity, type, and application rate of wastewater residuals applied to each land application site during the previous year.
- c. A calculation of the quantity of the individual wastewater residual parameters, listed in Paragraph (2) above in lbs/acre and total pounds applied during the previous year for each application site. The quantities need to be expressed in both a wet and dry wastewater residuals basis.
- d. Test results on the wastewater residuals expected to be applied in the next calendar year and soil sampling results at the planned land application site(s) (pursuant to the above Supplemental Conditions).
- e. A wastewater residuals land application plan for the upcoming calendar year based on results of the soil monitoring for each proposed land application site, the projected quantity, quality and type of wastewater residuals, the crops to be grown on each application site, and the projected crop yields.
- f. The Land Application Plan and Annual Report shall include a certificate of review by either a Certified Crop Advisor or a person, acceptable to KDHE, who is knowledgeable through education and training in crop moisture and nutrient requirements i.e., crop science or agronomy. The land application review shall address the rate and quantities of wastewater residuals applied; the application rate of nutrients from the wastewater residuals and other nutrient sources including commercial fertilizers applied; salinity issues; and presence or accumulation of other pollutants of agronomic concern. The land application review shall be

based on the cropping practice that year and the measured land application site soil characteristics. The review and certification shall indicate whether the wastewater residuals and any commercial fertilizer added to the sites were applied in conformance with the requirements of this permit, agronomic application rates, and generally accepted agricultural practices. At land application sites where the requirements of this permit were violated, agronomic application rates were exceeded, or generally accepted agricultural practices were not followed, the review certification shall recommend appropriate corrective actions. The review also needs to address the Land Application Plan for the upcoming calendar year. The permittee shall provide to KDHE the qualifications of the person conducting the annual land application review and certification unless provided in previous land application report submittals.

If no land application occurs during a calendar year, no sampling or testing of the wastewater residuals or soil is required. The annual report is still required and is to indicate "no land application conducted during the calendar year" on the report.

**STANDARD CONDITIONS FOR
KANSAS WATER POLLUTION CONTROL AND
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS**

1. Representative Sampling and Discharge Monitoring Report Submittals:
 - A. Samples and measurements taken as required herein shall be representative of the quality and quantity of the monitored discharge. Test results shall be recorded for the day the samples were taken. If sampling for a parameter was conducted across more than one calendar day, the test results may be recorded for the day sampling was started or ended. All samples shall be taken at the locations designated in this permit, and unless specified, at the outfall/monitoring location(s) before the wastewater joins or is diluted by any other water or substance.
 - B. Monitoring results shall be recorded and reported on forms acceptable to the Division and submitted no later than the 28th day of the month following the completed reporting period. Signed and certified copies of other reports, required herein, prepared in accordance with KAR 28-16-59, may be faxed to 785.296.0086, e-mailed as scanned attachments to dmr4kdhe@kdheks.gov, or sent by U.S. mail to:

Kansas Department of Health & Environment
Bureau of Water-Technical Services Section
1000 SW Jackson Street, Suite 420
Topeka, KS 66612-1367

2. Definitions:
 - A. Unless otherwise specifically defined in this permit, the following definitions apply:
 1. The "Daily Maximum" is the total discharge by weight or average concentration, measurement taken, or value calculated during a 24-hour period. The parameter, pH, is limited as a range between and including the values shown.
 2. The "Weekly Average" is the arithmetic mean of the value of test results from samples collected, measurements taken or values calculated during four monitoring periods in each month consisting of calendar days 1-7, 8-14, 15-21 and 22 through the end of the month.
 3. The "Monthly Average", other than for E. coli bacteria, is the arithmetic mean of the value of test results from samples collected, measurements taken or values calculated during a calendar month. The monthly average is determined by the summation of all calculated values or measured test results divided by the number of calculated values or test results reported for that parameter during the calendar month. The monthly average for E. coli bacteria is the geometric average of the value of the test results from samples collected in a calendar month. The geometric average can be calculated by using a scientific calculator to multiply all the E. coli test results together and then taking the nth root of the product where n is the number of test results. Non-detect values shall be reported using the less than symbol (<) and the minimum detection or reportable value. To calculate average values, non-detects shall be defaulted to zero (or one for geometric averages). Greater than values shall be reported using the greater than symbol (>) and the reported value. To calculate average values, the greater than reported value shall be used in the averaging calculation.
 - B. A "grab sample" is an individual sample collected in less than 15 minutes. A "composite sample" is a combination of individual samples in which the volume of each individual sample is proportional to the flow, or the sample frequency is proportioned to the flow rate over the sample period, or the sample frequency is proportional to time.
 - C. The terms "Director", "Division", and "Department" refer to the Director, Division of Environment, Kansas Department of Health and Environment, respectively.
 - D. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of an in-plant diversion. Severe property damage does not mean economic loss caused by delays in production.
 - E. "Bypass" means the intentional diversion of waste streams from any portion of the treatment facility.

3. **Schedule of Compliance:** No later than 14 calendar days following each date identified in the "Schedule of Compliance," the permittee shall submit via mail, e-mail or fax per paragraph 1.B above, either a report of progress or, in the case of specific action being required by identified dates, a written notice of compliance or noncompliance. In the latter case, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirements, or, if there are no more scheduled requirements, when such noncompliance will be corrected.
4. **Test Procedures:** All analyses required by this permit shall conform to the requirements of 40 CFR Part 136, unless otherwise specified, and shall be conducted in a laboratory accredited by the Department. For each measurement or sample, the permittee shall record the exact place, date, and time of measuring/sampling; the date and time of the analyses, the analytical techniques or methods used, minimum detection or reportable level, and the individual(s) who performed the measuring/sampling and analysis and, the results. If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved procedures, the results shall be included in the Discharge Monitoring Report form required in 1.B. above. Such increased frequencies shall also be indicated.
5. **Change in Discharge:** All discharges authorized herein shall be consistent with the permit requirements. The discharge of any pollutant not authorized by this permit or of any pollutant identified in this permit more frequently than or at a level in excess of that authorized shall constitute a violation of this permit. Any anticipated facility expansions, production or flow increases, or production or wastewater treatment system modifications which result in a new, different, or increased discharge of pollutants shall be reported to the Division at least one hundred eighty (180) days before such change.
6. **Facilities Operation:** The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the requirements of this permit and Kansas and Federal law. Proper operation and maintenance also include adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the requirements of this permit. The permittee shall take all necessary steps to minimize or prevent any adverse impact to human health or the environment resulting from noncompliance with any effluent limits specified in this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge. When necessary to maintain compliance with the permit requirements, the permittee shall halt or reduce those activities under its control which generate wastewater routed to this facility.
7. **Incidents:**

"Collection System Diversion" means the diversion of wastewater from any portion of the collection system.

"In-Plant Diversion" means routing the wastewater around any treatment unit in the treatment facility through which it would normally flow.

"In-Plant Flow Through" means an incident in which the wastewater continues to be routed through the equipment even though full treatment is not being accomplished because of equipment failure for any reason.

"Spill" means any discharge of wastewater, sludge or other materials from the treatment facility other than effluent or as more specifically described by other "Incidents" terms.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance or anticipated noncompliance with permit effluent limits because of factors beyond the reasonable control of the permittee, as described by 40 C.F.R. 122.41(n).
8. **Diversion not Exceeding Limits:** The permittee may allow any diversion to occur which does not cause effluent limits to be exceeded, but only if it also is for essential maintenance to assure efficient operation. Such diversions are not subject to the Incident Reporting requirements shown below.
9. **Prohibition of an In-Plant Diversion:** Any in-plant diversion from facilities necessary to maintain compliance with this permit is prohibited, except: (a) where the in-plant diversion was unavoidable to prevent loss of life, personal injury, or severe property damage; (b) where there were no feasible alternatives to the in-plant diversion, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime and (c) the permittee submitted a notice as required in the Incident Reporting paragraph below. The Director may approve an anticipated in-plant diversion, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above.

10. **Incident Reporting:** The permittee shall report any unanticipated collection system diversion, in-plant diversion, in-plant flow through occurrences, spill, upset or any violation of a permitted daily maximum limit within 24 hours from the time the permittee became aware of the incident. A written submission shall be provided within 5 days of the time the permittee became aware of the incident. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times; and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. An Incident Report form is available at www.kdheks.gov/water/tech.html.

For an anticipated incident or any planned changes or activities in the permitted facility that may result in noncompliance with the permit requirements, the permittee shall submit written notice, if possible, at least ten days before the date of the event.

For other noncompliance, the above information shall be provided with the next Discharge Monitoring Report.

11. **Removed Substances:** Solids, sludges, filter backwash, or other pollutants removed in the course of treatment of water shall be utilized or disposed of in a manner acceptable to the Division.
12. **Power Failures:** The permittee shall provide an alternative power source sufficient to operate the wastewater control facilities or otherwise control pollution and all discharges upon the loss of the primary source of power to the wastewater control facilities.
13. **Right of Entry:** The permittee shall allow authorized representatives of the Division of Environment or the Environmental Protection Agency upon the presentation of credentials, to enter upon the permittee's premises where an effluent source is located, or in which are located any records required by this permit, and at reasonable times, to have access to and copy any records required by this permit, to inspect any facilities, monitoring equipment or monitoring method required in this permit, and to sample any influents to, discharges from or materials in the wastewater facilities.
14. **Transfer of Ownership:** The permittee shall notify the succeeding owner or controlling person of the existence of this permit by certified letter, a copy of which shall be forwarded to the Division. The succeeding owner shall secure a new permit. This permit is not transferable to any person except after notice and approval by the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary.
15. **Records Retention:** Unless otherwise specified, all records and information resulting from the monitoring activities required by this permit, including all records of analyses and calibration and maintenance of instruments and recordings from continuous monitoring instruments, shall be retained for a minimum of 3 years, or longer if requested by the Division. Biosolids/sludge records and information are required to be kept for a minimum of 5 years, or longer if requested by the Division. Groundwater monitoring data, including background samples results, shall be kept for the life of the facility regardless of ownership.
16. **Availability of Records:** Except for data determined to be confidential under 33 USC Section 1318, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department. Effluent data shall not be considered confidential. Knowingly making any false statement on any such report or tampering with equipment to falsify data may result in the imposition of criminal penalties as provided for in 33 USC Section 1319 and KSA 65-170c.
17. **Permit Modifications and Terminations:** As provided by KAR 28-16-62, after notice and opportunity for a hearing, this permit may be modified, suspended or revoked or terminated in whole or in part during its term for cause as provided, but not limited to those set forth in KAR 28-16-62 and KAR 28-16-28b through g. The permittee shall furnish to the Director, within a reasonable amount of time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish upon request, copies of all records required to be kept by this permit. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.
18. **Toxic Pollutants:** Notwithstanding paragraph 17 above, if a toxic effluent standard or prohibition (including any schedule of compliance specified at such effluent standards) is established under 33 USC Section 1317(a) for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in this permit, this permit shall be revised or modified in accordance with the toxic effluent standard or prohibition. Nothing in this permit relieves the permittee from complying with federal toxic effluent standards as promulgated pursuant to 33 USC Section 1317.

19. Administrative, Civil and Criminal Liability: The permittee shall comply with all requirements of this permit. Except as authorized in paragraph 9 above, nothing in this permit shall be construed to relieve the permittee from administrative, civil or criminal penalties for noncompliance as provided for in KSA 65-161 et seq., and 33 USC Section 1319.
20. Oil and Hazardous Substance Liability: Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities or penalties to which the permittee is or may be subject to under 33 USC Section 1321 or KSA 65-164 et seq. A municipal permittee shall promptly notify the Division by telephone upon discovering crude oil or any petroleum derivative in its sewer system or wastewater treatment facilities.
21. Industrial Users: A municipal permittee shall require any industrial user of the treatment works to comply with 33 USC Section 1317, 1318 and any industrial user of storm sewers to comply with 33 USC Section 1308.
22. Property Rights: The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights nor any infringements of or violation of federal, state or local laws or regulations.
23. Operator Certification: The permittee shall, if required, ensure the wastewater facilities are under the supervision of an operator certified by the Department. If the permittee does not have a certified operator or loses its certified operator, appropriate steps shall be taken to obtain a certified operator as required by KAR 28-16-30 et seq.
24. Severability: The provisions of this permit are severable. If any provision of this permit or any circumstance is held invalid, the application of such provision to other circumstances and the remainder of the permit shall not be affected thereby.
25. Removal from Service: The permittee shall inform the Division at least three months before a pumping station, treatment unit, or any other part of the treatment facility permitted by this permit is to be removed from service and shall make arrangements acceptable to the Division to decommission the facility or part of the facility being removed from service such that the public health and waters of the state are protected.
26. Duty to Reapply: A permit holder wishing to continue any activity regulated by this permit after the expiration date, must apply for a new permit at least 180 days prior to expiration of the permit.
27. Publicly owned treatment works (POTWs): All POTWs shall provide adequate notice to the Director of the following per 40 CFR 122.42(b):
 - A. Any new introduction of pollutants into the POTW from a non-domestic source which would be subject to section 301 or 306 of the CWA ; and
 - B. Any substantial change in the volume or character of pollutants being introduced into a POTW by a non-domestic source.
 - C. For purposes of this paragraph, adequate notice shall mean within 30 days of the POTW being aware of the introduction of pollutants and shall include information on the quality and quantity of influent introduced into the POTW, and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.
28. POTW regulated pretreatment program requirements: For POTWs with an approved pretreatment program, the POTW shall:
 - A. Identify, in terms of character and volume of pollutants, any Significant Industrial Users discharging into the POTW subject to Pretreatment Standards under section 307(b) of CWA and 40 CFR part 403.
 - B. Provide to KDHE and EPA a written technical evaluation of the need to develop new local limits or revise existing local limits under 40 CFR 403.5(c)(1).
29. This permit may be reopened and modified if KDHE and/or EPA determines the permittee shall develop and approved pretreatment program that complies with 40 CFR, Part 403.

EXHIBIT E
MEASUREMENT AND PAYMENT
Hillsdale WTP Waste and Residuals Basin Cleanout

MP-1 GENERAL

- A. It is the intention of this section of the specifications to set forth the method of measurement and payment for that part of the work on the Contract Documents that will be directly paid for at the price bid per unit of measure.
- B. All the work to be performed under this contract will be paid for at the lump sum for each residual basin cleanout stated in the submitted proposal of the accepted Contractor.

Lump sum shall constitute full compensation for all labor, materials, tools, equipment and incidentals required to complete the work for one basin cleanout, as described in accordance with the Contract Documents. Any material, equipment or operation not specifically mentioned, however, required for proper completion of the work shall be considered to be incidental to the lump sum price.

- C. Quantities listed in the bid proposal form are estimated and are not guaranteed. Estimated quantities indicated only for convenience in comparing bids. Payment will be made for actual quantities constructed or installed, be they more or less than those listed unless otherwise indicated; said quantities being measured and determined as follows.
- D. No adjustments shall be made to unit prices listed on the bid proposal form, for the measured and determined actual quantities constructed or installed, be they more or less than the estimated quantity.
- E. The CONTRACTOR shall provide temporary walks, fencing, barricades or other protective measures as necessary to ensure the safety of the public traversing the construction site. Equipment storage areas and material stockpiles shall be located on sites provided by the CONTRACTOR with due regard to location, appearance, and hazard potential to the traveling public.
- F. Temporary construction entrance, temporary surfacing or any interim construction necessary shall be maintained by the CONTRACTOR at all times and shall be constructed of a material approved by the City Engineer. This work shall be subsidiary to other proposed bid items.



PROPOSER'S AFFIDAVIT
Hillsdale WTP Waste and Residuals Basin Cleanout

This completed Proposer's Affidavit form must be submitted with the Proposer's Bid and will become a part of any agreement that may be awarded. This Proposer's Affidavit must be signed by an authorized representative. If the Proposal Signature Form is not signed by an authorized representative or submitted with the proposal, the proposal is considered non-responsive.

Please type or print:

Legal Name of Person, Firm or Corporation: _____

Address: _____

City/State/Zip: _____

Contact Person: _____

Phone: _____ Email: _____

Federal ID #: _____

Type of Organization: ☐ Individual ☐ Small Business ☐ Non-profit
☐ Partnership ☐ Corporation ☐ Joint Venture

Attach copies of all such licenses, permits or certificates issued to the business entity.

The undersigned person by his/her signature affixed hereon warrants that:

- A. He/she is an officer of the organization.
- B. He/she has been specifically authorized to offer a bid in full compliance with all requirements, and conditions, as set for in this Invitation for Bid.
- C. The Proposer complies with all of the requirements of the Bid.
- D. The Proposer certifies all products and services in the bid meet or exceed all requirements of this specification as set forth in the Bid and that all exceptions are clearly identified.
- E. He/she received the following addenda to the Invitation to Bid (indicate number and date of each):
 - Addendum No.: _____ Dated: _____
 - Addendum No.: _____ Dated: _____
 - Addendum No.: _____ Dated: _____

Authorized Signature: _____ Date: _____
(Title)

Subscribed and sworn to before me this _____ day of _____, 20__ by _____.

(Signature of Notary Public) (seal, if any)

My commission expires: _____



BID PROPOSAL FORM

Hillsdale WTP Waste and Residuals Basin Cleanout

All Pricing is to be in accordance with all Specifications as stated within the Request for Proposal documents. Failure to complete the following form(s) shall result in your Proposal being deemed non-responsive and rejected without any further evaluation.

The undersigned Proposer hereby proposes to furnish all material, supplies, transportation, tools, equipment and necessary labor to construct, install, plant and complete all Work stipulated in, required by, and in conformity with the proposed Contract Documents, incorporated herein (including all documents referred to therein) and any and all written addenda thereto, for and in consideration of the unit prices as follows:

BIDDING COMPANY: _____

Item	Description	Unit	Total Cost
1	2022 – Cleanout West Residual Basin A	LS (Lump Sum)	
2	2023 – Cleanout East Residual Basin B	LS (Lump Sum)	
3	2024 – Cleanout West Residual Basin A	LS (Lump Sum)	
4	2025 – Cleanout East Residual Basin B	LS (Lump Sum)	

TOTAL BID: \$ _____

1. In submitting this Bid, the undersigned declares that it is of lawful age and executed this Bid on behalf of the Bidder named herein, and that the undersigned has lawful authority to do so. The undersigned further declares that it has not directly or indirectly entered into any agreement, expressed or implied, with any Bidder or Bidders, having for its object the controlling of the price or amount of such Bid or any Bids, the limiting of the Bid or Bidders, the parceling or farming out to any Bidder or Bidders, or other persons, of any part of the Agreement or any part of the subject matter of the Bid or Bids or of the profits thereof, and that it has not and will not divulge the sealed Bid to any person whomsoever, except those having a partnership or other financial interest with Bidder in said Bid or Bids, until after the sealed Bid or Bids are opened.
2. The undersigned further declares that it has carefully examined the Notice to Bidders and other Contract Documents, and that it has inspected the actual location of the Work, together with the local sources of supply, and has satisfied itself as to all conditions and quantities, and understands that in signing this Bid Form the undersigned on behalf of the Bidder waives all right to plead any misunderstanding regarding the same.



BID PROPOSAL FORM

Hillsdale WTP Waste and Residuals Basin Cleanout

3. The undersigned hereby agrees to furnish the required bonds and insurance certificates and execute the Agreement within ten (10) calendar days from and after Notice of Award of the Agreement is delivered to the Bidder, and failure of the Bidder to do so shall constitute a default, and the City may thereafter take such steps to protect its legal rights as it deems in its best interest, including, but not limited to, enforcement of its rights as performance.
5. It is understood that the City will pay monthly pay estimates submitted in accordance with the City of Gardner's claims policy and approved by the Utilities Director, all as provided in the Contract Documents.
6. The undersigned acknowledges receipt of the Plans and Specifications for the Project including the following written addenda (insert "none" if none were received):

Dated this _____ day of _____, 2021.

[Contractor]

By:

Title

Address

City, State, Zip

Telephone Number

E-Mail [if available]

Facsimile Number [if available]



BIDDER'S QUALIFICATION STATEMENT

Hillsdale WTP Waste and Residuals Basin Cleanout

1. The name, address, telephone number/fax number/email address of the bidder.

Name: _____

Address: _____

Phone/Fax/Email: _____

2. Years in business _____

3. List of contractors owned equipment available for this project. Attach as separate submittal, if necessary.

4. List of equivalent type projects within the last four (4) years. Attach as separate submittal, if necessary.

i. Name of Client: _____ Date of Project: _____

Contact Person: _____ Phone: _____

Description of Project: _____

ii. Name of Client: _____ Date of Project: _____

Contact Person: _____ Phone: _____

Description of Project: _____

iii. Name of Client: _____ Date of Project: _____

Contact Person: _____ Phone: _____

Description of Project: _____

5. List of person(s) who will supervise and be available to perform the work on this project and the number of years' experience.

Role:	Names:	Years Experience:
Project Manager:		
Superintendent:		
Foreman:		
Other Personnel:		

6. List of Proposed Major Subcontractors:

Each bidder shall enter in the space provided the name(s) of major subcontractors the bidder proposes to employ and the type of work the subcontractor will perform. A major subcontractor is defined as a subcontractor whose subcontract constitutes approximately five (5) percent or more of the total contract price.

Subcontractor	Address	Phone #	Type/Scope of Work

7. Such additional information as will assist the City in determining whether the bidder is adequately prepared to fulfill the contract. Attach a separate submittal, if necessary.

The undersigned hereby authorizes and requests any person, firm or corporation to furnish any information requested by the City in verification of the recitals comprising this statement of bidder's qualifications.

Authorized Signature: _____ Date: _____
(Title)

Subscribed and sworn to before me this _____ day of _____, 20__ by
_____.

(Signature of Notary Public) (seal, if any)

My commission expires: _____



SUBCONTRACTOR'S QUALIFICATION STATEMENT

Hillsdale WTP Waste and Residuals Basin Cleanout

Please fill out a form for each subcontractor the contractor proposes to employ. Copy this form if additional forms are required and attach as separate submittals to the Proposal.

1. The name, address, telephone number/fax number/email address of the Subcontractor.

Name: _____

Address: _____

Phone/Fax/Email: _____

2. Years in business _____

3. List of Subcontractors owned equipment available for this project. Attach as separate submittal, if necessary.

4. List of equivalent type projects within the last four (4) years. Attach as separate submittal, if necessary.

i. Name of Client: _____ Date of Project: _____

Contact Person: _____ Phone: _____

Description of Project: _____

ii. Name of Client: _____ Date of Project: _____

Contact Person: _____ Phone: _____

Description of Project: _____

iii. Name of Client: _____ Date of Project: _____

Contact Person: _____ Phone: _____

Description of Project: _____

5. List of person(s) who will supervise and be available to perform the work on this project and the number of years' experience.

Role:	Names:	Years experience:
Project Manager		
Superintendent		
Foreman:		
Other Personnel:		

6. Such additional information as will assist the City in determining whether the bidder is adequately prepared to fulfill the contract. Attach a separate submittal, if necessary.

The undersigned hereby authorizes and requests any person, firm or corporation to furnish any information requested by the City in verification of the recitals comprising this statement of subcontractor's qualifications.

Authorized Signature: _____ Date: _____
(Title)

Subscribed and sworn to before me this _____ day of _____, 20__ by

_____.

(Signature of Notary Public) (seal, if any)

My commission expires: _____



**CERTIFICATE OF NONDISCRIMINATION
MANDATORY PROVISIONS**

Hillsdale WTP Waste and Residuals Basin Cleanout

K.S.A. § 44-1030(a) provides that every contract for or on behalf of the City of Gardner, Kansas for the construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies or services shall contain provisions by which the contractor agrees to the following:

- (1) that the contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, age, national origin or ancestry;
- (2) that in all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer," or similar phrase as approved by the state commission;
- (3) that if the contractor fails to comply with the manner in which the contractor reports to the state commission in accordance with the provision of K.S.A. § 44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the City of Gardner;
- (4) that if the contractor is found guilty of a violation of the Kansas Act Against Discrimination under decision or order of the state commission which has become final, the contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the City of Gardner; and
- (5) that the contractor shall include the provisions of K.S.A. § 44-1030(a) subsections (1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of K.S.A. § 44-1030(a) shall not apply to a contract entered into by a contractor: (1) who employs fewer than four (4) employees during the term of such contract; or (2) whose contracts with the City of Gardner cumulatively totals \$5,000 or less during the same fiscal year.

By signing this Certificate of Nondiscrimination, contractor acknowledges inclusion of the requirements of K.S.A. 44-1030(a) in the base contract and in all subcontracts.

DATE: _____

Contractor/Principal

By: _____

Signature

CORPORATE SEAL

(Official Title of Signer)



NONCOLLUSION AFFIDAVIT OF PRIME BIDDER

Hillsdale WTP Waste and Residuals Basin Cleanout

STATE OF _____)
COUNTY OF _____)

_____, being first duly sworn deposes and says that:

- (1) He is _____ of _____, the Bidder that has submitted the attached Bid;
- (2) He is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
- (3) Such Bid is genuine and is not a collusive or sham bid;
- (4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees of parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Gardner, KS or any person interested in the proposed Contract;
- (5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

By: _____

Name: _____

Title: _____

Bidder: _____

Subscribed and sworn to before me this _____ day of _____, 20__ by

_____.

(Signature of Notary Public)

(seal, if any)

My commission expires: _____



BID BOND

Hillsdale WTP Waste and Residuals Basin Cleanout

KNOW ALL MEN BY THESE PRESENTS, that _____ as Principal, hereinafter called the Principal, and _____ a corporation duly organized under the laws of the State of _____ as Surety, hereinafter called the Surety, are held and firmly bound unto the City of Gardner Kansas, as Obligee, hereinafter called the Obligee, in the sum of _____ Dollars (\$_____), for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for the following project:

PROJECT: Hillsdale WTP Waste and Residuals Basin Cleanout

NOW THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this/her obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this/her _____ day of _____, 2022.

[SEAL]

[Contractor/Principal]

[Title]

ATTEST:

[Secretary]

[Surety Company]

[SEAL]

By:

[Attorney-in-fact]



MAINTENANCE BOND

Hillsdale WTP Waste and Residuals Basin Cleanout

KNOW ALL MEN BY THESE PRESENTS:

That we, _____ as the "Principal," hereinafter referred to as "Contractor," and _____ as and hereinafter referred to as the "Surety," a corporation organized under the laws of the State of _____ and authorized to transact business in the State of Kansas, are held and firmly bound unto the CITY OF GARDNER, KANSAS hereinafter referred to as "City," in the penal sum of _____ Dollars (\$ _____) for the payment of which sum, well and truly to be made, we hereby bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents:

THE CONDITIONS OF THIS BOND are such that:

WHEREAS, Contractor has executed a written Agreement, including the Contract Documents, with City to construct certain improvements referred to as **Hillsdale WTP Waste and Residuals Basin Cleanout**, more particularly described in the Agreement and the Contract Documents dated _____, 20____, the Agreement and the Contract Documents are made a part hereof by reference as if fully set out herein.

The Contractor, upon completion of the Agreement and upon acceptance by the City of Gardner, in accordance with the Contract Documents, approved plans and specifications with no unacceptable deviations thereof, has agreed to guarantee and maintain the construction and installation, including all materials and workmanship, for the period of two years beginning on the date that each City so accepts said work, said date being the formal acceptance date.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alternation or addition to the terms of the Agreement or other Contract Documents, Specifications and Plans, to the work to be performed thereunder, or the specifications accompanying the same, shall in any way effect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the specification. Surety further agrees that any person to whom there is due any sum for labor or material furnished, as herein before stated, or said person's assigns, may bring action on this bond for the recovery of said indebtedness; PROVIDED, that no action shall be brought on said bond after twenty-four (24) months from the completion of said public improvements.

NOW, THEREFORE, if Contractor has constructed and completed or caused to be constructed and completed the entire improvement in strict compliance with the Agreement and Contract Documents, including all documents incorporated therein, between City and Contractor, and all applicable laws, rules, and regulations such as, but not limited to, those set forth in the Code of the City including the Minimum Standards for the Design and Construction of Streets, Sanitary Sewers, Water Lines, and

Storm Drainage Improvements, completed to the satisfaction of the City Engineer and with such materials and in such manner that the same shall endure without need of repairs or maintenance for a period of (2) two years from and after the completion and acceptance by City's governing Body; and if said improvement shall actually endure without the need of repairs or maintenance for the period of (2) two years from and after the completion and acceptance thereof as aforesaid, then this obligation shall be null and void.

PROVIDED, that if the improvement requires repairs or maintenance within such (2) two year period then this obligation shall remain in full force and effect and Contractor and the Surety shall be responsible for the prompt payment of the penal sum to the City for such repairs and/or maintenance including any incidental costs associated therewith, including but not limited to the costs of consultants and/or engineering investigations, testing, analysis and any other costs incurred to determine the cause of defect and/or the necessary repair and maintenance and attorney fees incurred in collection of this Maintenance Bond.

PROVIDED, FURTHER, that if said Contractor fails to duly and faithfully guarantee and maintain said work, the Surety will pay for the same in any amount not exceeding the amount of this obligation, together with interest as provided by law.

Signed and sealed this ____ day of _____, 20__.

[SEAL]

[Contractor/Principal]

[Title]

[SEAL]

[Surety Company]

By:

[Attorney-in-fact]

By:

[Kansas Agent]

(Accompany this Bond with Attorney-in-Fact's authority from the surety company certified to include the date of the bond.)



PERFORMANCE BOND

Hillsdale WTP Waste and Residuals Basin Cleanout

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned of _____, as Principal, hereinafter referred to as the "Contractor," and _____, a corporation organized under the laws of the State of _____, and authorized to transact business in the State of Kansas, hereinafter referred to as the "Surety," are held and firmly bound unto the CITY OF GARDNER, KANSAS hereinafter referred to as "City," in the penal sum of _____ Dollars (\$_____), lawful money of the United States of America, for the payment of which sum, well and truly to be made to the City of Gardner, Kansas, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the above bonded Contractor, has on the ____ day of _____, 20____, executed a written Agreement with the City for furnishing in a good, substantial and workmanlike manner all construction labor, materials, equipment, tools, transportation, superintendence, and other facilities and accessories, for and in connection with the satisfactory and timely performance of all Work and construction of certain improvements referred to as **Hillsdale WTP Waste and Residuals Basin Cleanout**, more particularly designated, defined and described in the Agreement and the Contract Documents, and in accordance with the Specifications and Plans and other Contract Documents thereto; a copy of said Agreement is attached hereto and made a part hereof.

NOW THEREFORE, if said Contractor shall and will, in all particulars promptly and faithfully perform and abide by each and every covenant, condition, and part of said Agreement, and the Conditions, Specifications, Plans and other Contract Documents hereto attached or by reference made a part hereof, according to the true intent and meaning in each case, and said improvements shall be constructed and completed in strict accordance with the Contract Documents, conditions, specifications, plans and other documents, and if said Contractor shall replace all defective parts, material and workmanship for a period of two (2) years after acceptance by the City, then this obligation shall be and become null and void; otherwise it shall remain in full force and effect.

PROVIDED, if said Contractor fails in any particulars to duly and faithfully observe, perform and abide by each and every covenant, condition, and part of the said Agreement and the Conditions, Specifications, Plans and other Contract Documents, thereto attached, or, by reference made a part thereof, according to the true intent and meaning in each case, or if said Contractor shall fail to replace all defective parts, material and workmanship for a period of two (2) years after acceptance by the City then the surety will pay the costs to complete the project and/or the costs to repair any defective parts for the period of two (2) years after acceptance, and any other damages incurred by the owner in procuring completion and/or repair, such amount not exceeding the amount of this obligation, together with interest as provided by law.

PROVIDED FURTHER, that if the said Contractor fails to duly pay for any labor, materials, sustenance, provisions, provender, gasoline, lubricating oils, fuel oils, greases, coal, equipment and tools consumed or used in said work, groceries and foodstuffs, and all insurance premiums, compensation; liability and otherwise, or any other supplies or materials used or consumed by such Contractor or his, their, or its subcontractors in performance of the Work contracted to be

done, the Surety will pay the same in any amount not exceeding the amount of this obligation, together with interest as provided by law.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement, or Contract Documents or the Work to be performed hereunder, or the Specifications, plans or other documents accompanying the same, shall in any way affect its obligations on this Performance Bond and it does hereby waive notice of any change, extension of time, alteration, or addition to the terms of the Agreement, or Contract Documents or to the Work, or to the Specifications, plans and other documents.

PROVIDED FURTHER, that it is expressly agreed that the bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Agreement not increasing the contract price more than fifty percent (50%), so as to bind the Contractor and the Surety to the full and faithful performance of the Agreement so amended. The term "amendment," wherever used in this bond, and whether referring to this bond or the Agreement, shall include any alteration, addition, extension, or modification of any character whatsoever.

IN TESTIMONY WHEREOF, the said Contractor has hereunto set his/her hand, and the said Surety has caused these presents to be executed in its name; and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do on this, the _____ day of _____, 20__.

[SEAL]	_____ [Contractor/Principal]
	_____ [Title]
[SEAL]	_____ [Surety Company]
By:	_____ [Attorney-in-fact]
By:	_____ [Kansas Agent]

NOTE:

1. Date of bond must not be prior to date of contract.
2. If Contractor is partnership, all partners should execute bond.
3. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Kansas.
4. Accompany this bond with Attorney-in-Fact's Authority from the surety company certified to include the date of the bond.



STATUTORY PAYMENT BOND

Hillsdale WTP Waste and Residuals Basin Cleanout

KNOW ALL MEN BY THESE PRESENTS:

THAT we, the undersigned, _____ of _____, hereinafter referred to as "Contractor", and _____ a corporation organized under the laws of the State of _____, and authorized to transact business in the State of Kansas, as "Surety", are held and firmly bound unto the State of Kansas, in the penal sum of _____ Dollars (\$_____), lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, or heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the above bonded CONTRACTOR has, on the _____ day of _____, 20____, entered into an Agreement with the City of Gardner, Kansas, for furnishing all tools, equipment, materials and supplies, performing all labor and constructing **Project: Hillsdale WTP Waste and Residuals Basin Cleanout**, described in the attached Agreement, Contract Documents, Specifications, Plans, and other documents on file in the office of the City Clerk of Gardner, Kansas.

NOW, THEREFORE, if the CONTRACTOR and his SUBCONTRACTORS shall pay all indebtedness incurred for supplies, materials, or labor furnished, used or consumed in connection with, or in, or about the construction or making of, public improvements, including gasoline, lubricating oils, fuel oils, greases, coal, and similar items used or consumed directly in furtherance of such improvements described in the above-mentioned Agreement and Contract Documents, this obligation shall be void; otherwise it shall remain in full force and effect.

PROVIDED, that the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement and the Contract Documents or to the work to be performed thereunder, or the Specifications or Plans accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Agreement, Contract Documents or to the Specifications or Plans.

PROVIDED FURTHER, that the surety agrees that any person to whom there is due any sum for supplies, materials, or labor, as herein before stated, or his assigns, may bring an action on this bond for the recovery of the indebtedness; PROVIDED, that no action shall be brought on the bond after six (6) months from the completion of said public improvements.

PROVIDED FURTHER, that it is expressly agreed that this bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Agreement not increasing the contract price more than fifty percent (50%), so

as to bind the Contractor and the Surety to the full and faithful performance of the Agreement as so amended. The term "amendment," wherever used in this bond and whether referring to this bond or the Agreement shall include any alteration, addition, extension or modification of any character whatsoever.

IN TESTIMONY WHEREOF, the CONTRACTOR has hereunto set his hand, and said surety has caused these presents to be executed in its name, and its corporate seal to be affixed by its attorney-in-fact duly authorized to do so at _____ on this, the day of _____, 20__.

[SEAL]

[Contractor/Principal]

[Title]

[Surety Company]

[SEAL]

By:

[Attorney-in-fact]

By:

[Kansas Agent]

NOTE:

1. A Statutory Bond is required only in connection with a Contract exceeding one hundred thousand dollars (\$100,000) in accordance with K.S.A. 60-1111 as amended.
2. Contractor shall be responsible for seeing to it that this Statutory Bond is filed with the Clerk of the District Court for Johnson County, Kansas.
3. Date on bond must not be prior to date of contract.
4. If Contractor is partnership, all partners should execute bond.
5. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Kansas.
6. Accompany this bond with Attorney-in-Fact's Authority from the surety company certified to include the date of the bond.



Company	Base Bid Amount	Bid Bond	Addendums
Nutri-Ject System, Inc.	\$117,380.00	X	X
Denali Water Solutions, LLC	\$64,850.00	X	X
Hodges Farms & Dredging, LLC	\$108,960.00	X	X
Sandyland Environmental Services	\$124,000.00	X	X

UTILITY ADVISORY COMMISSION STAFF REPORT DISCUSSION ITEM No. 1
MEETING DATE: MARCH 3, 2022
STAFF CONTACT: GONZ GARCIA, UTILITIES DIRECTOR

AGENDA ITEM: Consider implementing a standard Electric Distribution Reliability Indices Report

Background:

The Institute of Electrical and Electronics Engineers (IEEE), developed a standard (IEEE 1366) to facilitate uniformity in distribution service reliability indices and to aid in consistent reporting practices related to distribution systems, substations, circuits, and defined regions. This standard is used by electric service providers throughout the world and by the American Public Power Association (APPA).

Standard 1366 was issued in 1998 and updated several times since by the IEEE Distribution Design Working Group. It defines 12 reliability indices and provides guidance for calculating them. The most frequently monitored and reported indices include:

- a) System Average Interruption Frequency Index (SAIFI), which is how often the average customer experiences an interruption.
- b) System Average Interruption Duration Index (SAIDI), defined as the total number of minutes of interruption experienced by the average customer.
- c) Customer Average Interruption Duration Index (CAIDI), which is the average time required to restore service.
- d) Momentary Average Interruption Frequency Index (MAIFI) indicates the average frequency of momentary interruption events.
- e) Average Service Availability Index (ASAI) represents the fraction of time (often in percentage) that a customer has received power during the defined reporting period.

With the implementation of the Smart Meter Project, an Outage Management report is available that calculates the five (5) indices described above.

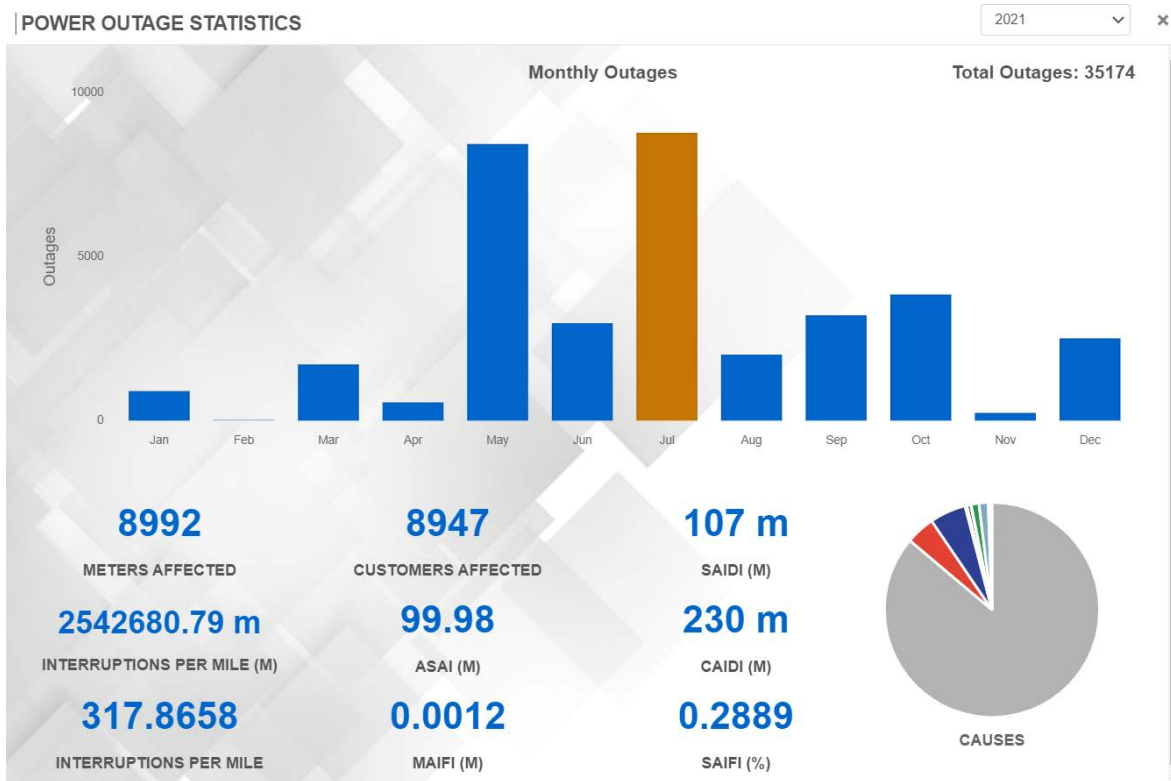
Staff would like to implement IEEE 1366 as the means to report electric reliability.

Attachments:

- 2021 Reliability Indices

2021 Reliability Indexes

Index	Period of Measure	Value of Index	Utility Goal / Target
SAIDI (Minutes/Year)	January 1, 2021 – December 31, 2021	107 minutes	< 90 minutes
CAIDI (Minutes/Year)	January 1, 2021 – December 31, 2021	230 minutes	< 190 minutes
ASAI (% based on year)	January 1, 2021 – December 31, 2021	99.98 %	≥ 99.98 %
MAIFI (Interruptions per year)	January 1, 2021 – December 31, 2021	0.0012 minutes	< 0.0010 minutes
SAIFI (Interruptions per year)	January 1, 2021 – December 31, 2021	0.2889 %	< 0.20 %
Other			



UTILITY ADVISORY COMMISSION STAFF REPORT

DISCUSSION ITEM #2

MEETING DATE: MARCH 3, 2022

STAFF CONTACT: GONZALO GARCIA, UTILITIES DIRECTOR

AGENDA ITEM: Project Updates

Background:

Staff will discuss current developments of projects.

UTILITY ADVISORY COMMISSION STAFF REPORT

DISCUSSION ITEM #3

MEETING DATE: MARCH 3, 2022

STAFF CONTACT: GONZ GARCIA, UTILITIES DIRECTOR

AGENDA ITEM: 2021 4th Quarter Electric Outage Report

Background:

Electric staff responded to 15 outages affecting 233 customers:

- 1 caused by equipment failures
- 1 caused by trees
- 5 caused by animals
- 1 caused by storms
- 2 caused by damage by others
- 5 caused by other reasons

The average workday response time was 17 minutes and the average workday length of outage 34 minutes.

The average after-hours response time was 27 minutes and the average after-hours length of outage was 1 hour and 36 minutes.

The overall average response time was 22 minutes and the overall average length of outage was 1 hour and 7 minutes.

Attachment Included:

- 2021 4th Quarter Electric Outage Report

Electric Outage Summary

Report Dates Between 10/1/2021 and 12/31/2021

1/25/2022

EQ - Equipment, TR - Trees, AN - Animals, SM - Storms, DO - Damage By Others, OT - Other

11:01 AM

WO #	Location	Date Reported	Time Reported	Date of Arrival	Time of Arrival	Date Complete	Time Completed	# Customers Affected	Problem	Comments	Response Time	Repair Time	Manhours	Cause
20211026-010	705 E COLLEEN DR	10/25/2021	6:03 pm	10/25/2021	6:25 pm	10/25/2021	6:35 pm	1	Power Out	Customer stated half power. customers breaker was the issue.	0:22	0:32	0	OT
20211028-010	525 N ELM ST	10/28/2021	10:32 am	10/28/2021	10:45 am	10/28/2021	11:17 am	150	Power Out	Squirrel on primary line. And also tree limbs on primary line, so we trimmed them back.Jim	0:13	0:45	2.0	AN
20211101-030	S PLUM CREEK DR 201 E PEACH TREE LN	10/28/2021	5:40 pm	10/28/2021	6:15 pm					Hit street light.	0:35		4.0	DO
20211115-011	121 N CENTER ST	11/13/2021	7:41 pm	11/13/2021	8:20 pm	11/13/2021	8:25 pm	1		Caller had power. No answer at the door.	0:39	0:44	1.0	OT
20211115-012	530 W WASHINGTON ST	11/14/2021	10:14 am	11/14/2021	10:50 am	11/14/2021	10:50 am	1		Remove meter for fire department due to house fire.	0:36	0:36	1.0	OT
20211124-013	195 E SANTA FE ST	11/24/2021	12:46 pm	11/24/2021	1:00 pm	11/24/2021	1:20 pm	1	Customer Side Issue	Lot 195 Fire coming from pedestal. Replaced meter block for temporary. Jim Cause was "Connection"- Had to change to "other" to fit categories in outage report. EG	0:14	0:34	1.0	OT
20211129-010	300 W MCKINLEY LN	11/25/2021	10:00 pm	11/25/2021	10:20 pm	11/25/2021	10:48 pm	1	Customer Side Issue	Pull meter for house fire	0:20	0:48	2.0	OT
20211129-012	415 E MAIN ST	11/27/2021	8:30 am	11/27/2021	8:45 am	11/27/2021	9:20 am	56	Power Out	Squirrel	0:15	0:50	2.0	AN
20211203-010	308 N CHERRY ST	12/2/2021	3:15 pm	12/2/2021	3:33 pm	12/2/2021	3:55 pm	19	Power Out	Power out, squirrel was found below dip pole. replaced line fuse with 40t.	0:18	0:40	3.0	AN
20211207-007	153 W WARREN ST	12/3/2021	5:20 pm	12/3/2021	5:40 pm	12/3/2021	5:55 pm	1	Power Out	Customer stated they heard a loud boom and lights flickered.	0:20	0:35	2.0	AN
20211207-008	106 N ELM ST	12/5/2021	4:45 pm	12/5/2021	5:20 pm	12/5/2021	7:26 pm		Power Out	Power outage due to squirrel.	0:35	2:41	6.0	AN
20211213-010	302 N WHITE DR	12/11/2021	7:44 am	12/11/2021	8:15 am	12/11/2021	1:45 pm	1	Needs Service	Riser pole with secondary blown over.	0:31	6:01	12.0	EQ
20211216-005	321 E PARK ST	12/15/2021	3:17 pm	12/15/2021	3:30 pm	12/15/2021	4:00 pm		Needs Service	Tree fell on secondary service between two houses.	0:13	0:43	0	SM
20211216-008	139 W MAIN ST	12/15/2021	2:13 pm	12/15/2021	2:19 pm	12/15/2021	2:32 pm	1	Power Out	Tree fell on secondary and pulled from house. They have to get an electrician to put meter can and mast back up. Jim	0:06	0:19	2.0	TR

Electric Outage Summary

Report Dates Between 10/1/2021 and 12/31/2021

1/25/2022

EQ - Equipment, TR - Trees, AN - Animals, SM - Storms, DO - Damage By Others, OT - Other

11:01 AM

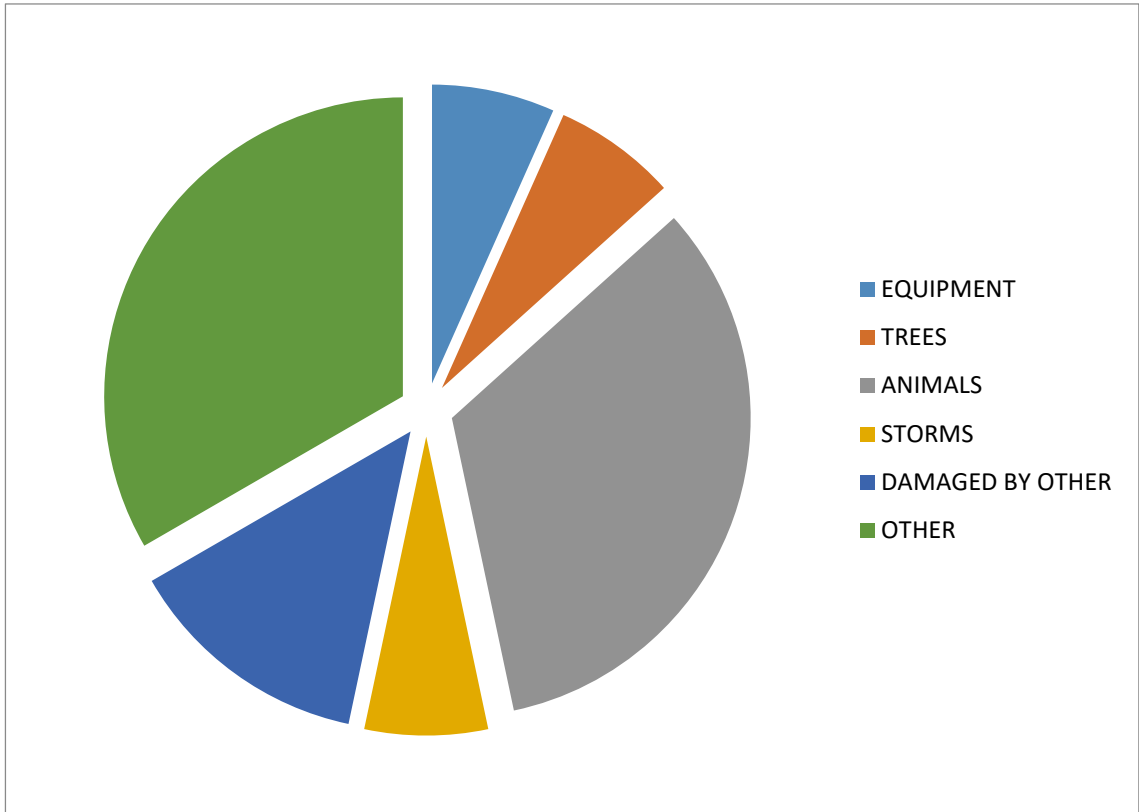
WO #	Location	Date Reported	Time Reported	Date of Arrival	Time of Arrival	Date Complete	Time Completed	# Customers Affected	Problem	Comments	Response Time	Repair Time	Manhours	Cause
20211228-020	GARDNER TO I35 NB RAMP	12/28/2021	2:52 pm	12/28/2021	3:10 pm	12/28/2021	3:51 pm		Needs Service	Car hit guy wire on temporary signal light pole. set a temp concrete block and ran new guy wire.	0:18	0:59	8.0	DO

Totals:	233												46.0	
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8	After Hours Average	0:27	1:36	Cause Totals	
7	Workday Average	0:17	0:34	EQ	1
15	Average	0:22	1:07	TR	1
				AN	5
				SM	1
				DO	2
				OT	5

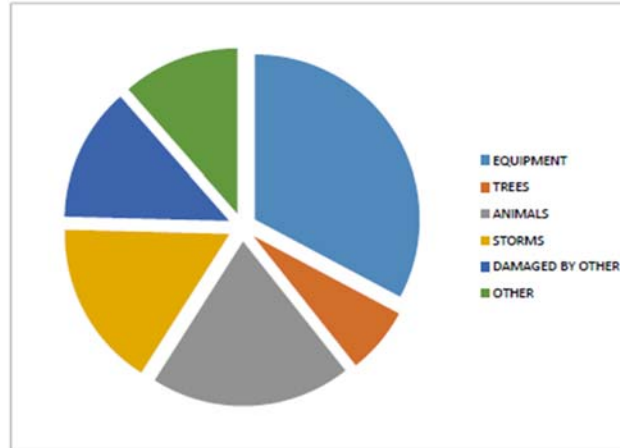
4Q 2021 Electric Outages

EQUIPMENT	TREES	ANIMALS	STORMS	DAMAGED BY OTHER	OTHER	TOTAL
1	1	5	1	2	5	15



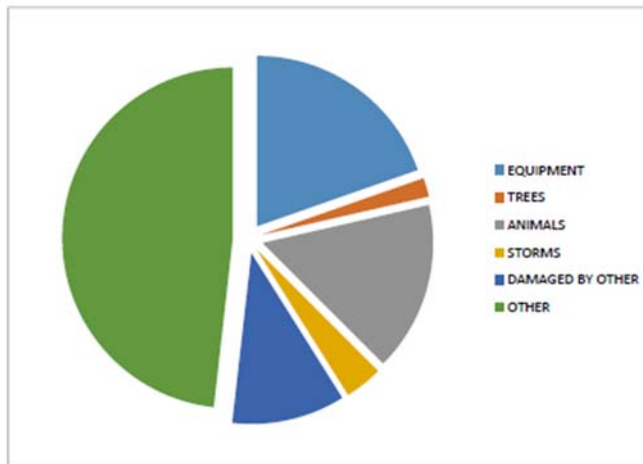
2019 Electric Year End Outages

EQUIPMENT	TREES	ANIMALS	STORMS	DAMAGED BY OTHER	OTHER	TOTAL
20	4	12	10	8	7	61



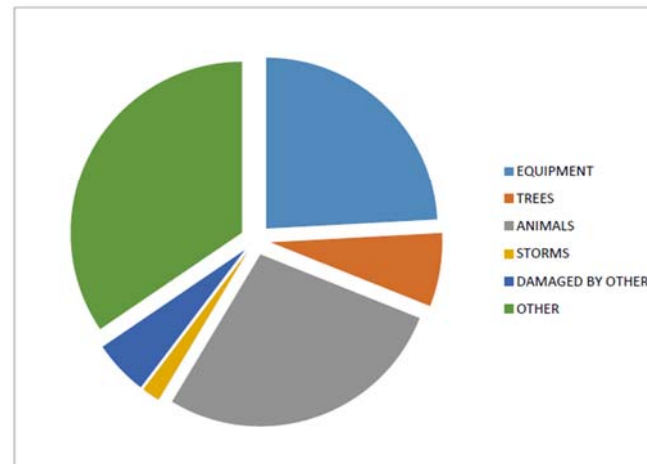
2020 Electric Year End Outages

EQUIPMENT	TREES	ANIMALS	STORMS	DAMAGED BY OTHER	OTHER	TOTAL
11	1	9	2	6	27	56



Year End 2021 Electric Outages

EQUIPMENT	TREES	ANIMALS	STORMS	DAMAGED BY OTHER	OTHER	TOTAL
14	4	16	1	3	20	58



UTILITY ADVISORY COMMISSION STAFF REPORT

DISCUSSION ITEM #4

MEETING DATE: MARCH 3, 2022

STAFF CONTACT: GONZ GARCIA, UTILITIES DIRECTOR

AGENDA ITEM: 2021 4th Quarter Wastewater Collection Repairs Report

Background:

Line maintenance staff completed 4 sanitary sewer line repairs affecting 4 customers:

- 3 due to residents' issues
- 1 due to other issue

The average workday response time was 16 minutes and the average workday repair time was 8 hours and 58 minutes.

The average after hours response time was 15 minutes and the average after hours repair time was 1 hour and 5 minutes.

The overall average response time was 16 minutes. The overall average repair time was 7 hours.

Attachment Included:

- 2021 4th Quarter Wastewater Collection Repairs Report

Sewer Repair Summary

Report Dates Between 10/1/2021 and 12/31/2021

1/26/2022
8:51 AM

GR - Grease, RT - Roots, LS - Line Sag, DB - Debris, LF - Line Failure, O - Damage By Others, RI - Residents Issue, OT - Other

WO #	Location	Date Reported	Time Reported	Date of Arrival	Time of Arrival	Date Complete	Time Completed	# Customers Affected	Problem	Comments	Response Time	Repair Time	Manhours	Cause
20211004-012	207 E COLLEEN DR	10/4/2021	8:50 am	10/4/2021	9:10 am	10/5/2021	10:00 am	1	Manhole Not At Grade	Ted-o : Got an email from Seth saying this customer called in about standing rain water around a manhole in his backyard. I called Gabe and sent him	0:20	25:10	0.5	RI
20211103-007	236 W PARK ST	11/3/2021	1:48 pm	11/3/2021	2:00 pm	11/3/2021	2:48 pm	1	Main Break	Resident stated that they had a sewer inspection on there newly purchased home and the plumber had reported a brake in the city main. resident also	0:12	1:00	3.0	RI
20211124-007	16930 S WALTER ST	11/24/2021	8:00 am	11/24/2021	8:15 am	11/24/2021	8:45 am	1	Sinkhole	Ted-o had me go check on a sink hole in a residents backyard when I got on site walked to the back and saw a hole I looked down inside and just saw	0:15	0:45	1.0	RI
20211129-013	226 S MEADOWBROOK CIR	11/27/2021	12:45 pm	11/27/2021	1:00 pm	11/27/2021	1:50 pm	1	Service Line Break	Ted-o called and told me that a guy hit the main sewer line when I arrived I found that it was just the service line. I called Ted-o and told him what I found	0:15	1:05	1.0	O
Totals:													5.5	

1	After Hours Average	0:15	1:05	Cause Totals	
3	Workday Average	0:16	8:58	GR	0
4	Average	0:16	7:00	RT	0
				LF	0
				LS	0
				O	0
				DB	0
				RI	3
				OT	1

4Q 2021 Sewer Repair Report

GREASE	ROOTS	Damage by Others	DEBRIS	LINE FAILURE	RESIDENTS' ISSUE	OTHER	TOTAL
0	0	0	0	0	3	1	4



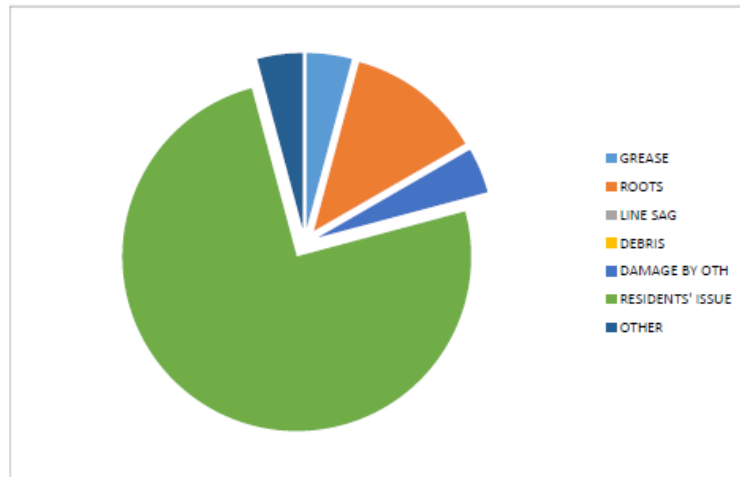
2019 Sewer Year End Repair Report

GREASE	ROOTS	Damage by Others	DEBRIS	LINE FAILURE	RESIDENTS' ISSUE	OTHER	TOTAL
0	5	5	0	1	0	7	18



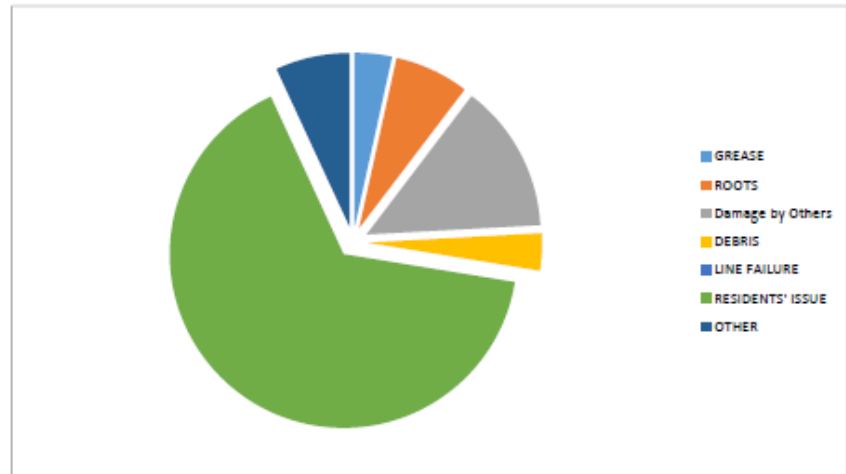
2020 Sewer Year End Repair Report

GREASE	ROOTS	LINE SAG	DEBRIS	DAMAGE BY OTH	RESIDENTS' ISSUE	OTHER	TOTAL
1	3	0	0	1	18	1	24



2021 Sewer Year End Repair Report

GREASE	ROOTS	Damage by Others	DEBRIS	LINE FAILURE	RESIDENTS' ISSUE	OTHER	TOTAL
1	2	4	1	0	19	2	29



UTILITY ADVISORY COMMISSION STAFF REPORT**DISCUSSION ITEM #5****MEETING DATE: MARCH 3, 2022****STAFF CONTACT: GONZ GARCIA, UTILITIES DIRECTOR**

AGENDA ITEM: 2021 4th Quarter Water Distribution Repairs Report

Background:

Line maintenance staff completed 4 water distribution service repairs affecting 2 customers:

- 3 due to residents' issues
- 1 due to other issues

The average workday response time was 15 minutes and the average workday repair time was 1 hour.

The average after hours response time was 23 minutes and the average after hours repair time was 1 hour and 18 minutes.

The overall average response time was 17 minutes. The overall average repair time was 1 hour and 5 minutes.

Attachment Included:

- 2021 4th Quarter Water Distribution Repairs Report

Water Distribution Repair Summary

Report Dates Between 10/1/2021 and 12/31/2021

1/26/2022
8:49 AM

LF - Line Failure, SF - Saddle Failure, VF - Valve Failure, RCF - Repair Clamp Failure, O - Damage By Others, RI - Residents Issue, OT - Other

WO #	Location	Date Reported	Time Reported	Date of Arrival	Time of Arrival	Date Complete	Time Completed	# Customers Affected	Problem	Comments	Response Time	Repair Time	Manhours	Cause
20211004-010	524 S POPLAR ST	10/2/2021	7:07 pm	10/2/2021	7:30 pm	10/2/2021	8:25 pm	1	No Service	Customer called saying they had no water upon. arrival the meter was turned off at the setter tuned the water back on at the setter and	0:23	1:18	1.0	RI
20211020-024	N WHITE DR	10/20/2021	12:00 pm	10/20/2021	12:15 pm	10/20/2021	1:00 pm	0	Yard Restoration	Backfilled a valve that had previously been hydro excavated.	0:15	1:00	3.0	OT
20211202-011	16941 W 169TH TER	12/2/2021	1:00 pm	12/2/2021	1:15 pm	12/2/2021	2:00 pm	0	Investigate	Customer called in stating that while backing out of their driveway they hit fire hydrant 22NEH12. upon arrival we did an inspection of	0:15	1:00	2.0	RI
20211222-013	416 N CHERRY ST	12/22/2021	7:30 am	12/22/2021	7:45 am	12/22/2021	8:30 am	1	Hydrant Leaking	Citizen called in saying the hydrant in front of this address was leaking. went out and investigated and found that the home owner at 417 N	0:15	1:00	2.0	RI
Totals:								2	8.0					

1	After Hours Average	0:23	1:18	Cause Totals	
3	Workday Average	0:15	1:00	LF	0
4	Average	0:17	1:05	SF	0
				VF	0
				RCF	0
				O	0
				RI	3
				OT	1

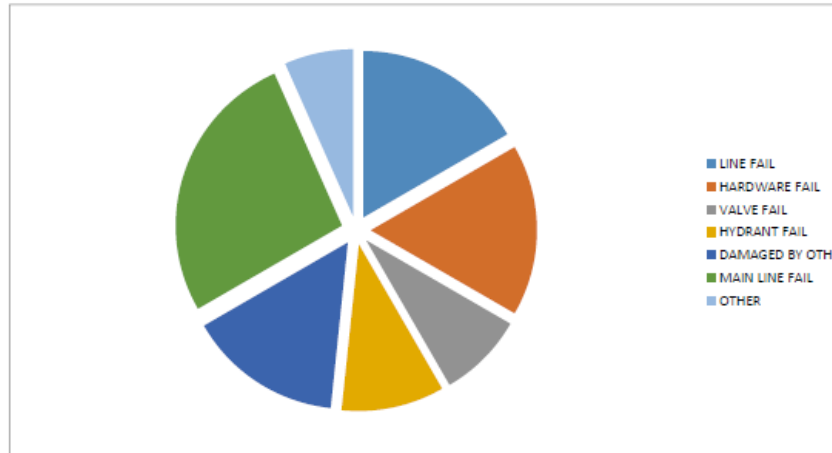
4Q 2021 Water Repair Report

LINE FAIL	HARDWARE FAIL	VALVE FAIL	HYDRANT FAIL	DAMAGED BY OTH	RESIDENTS' ISSUE	OTHER	TOTAL
0	0	0	0	0	3	1	4



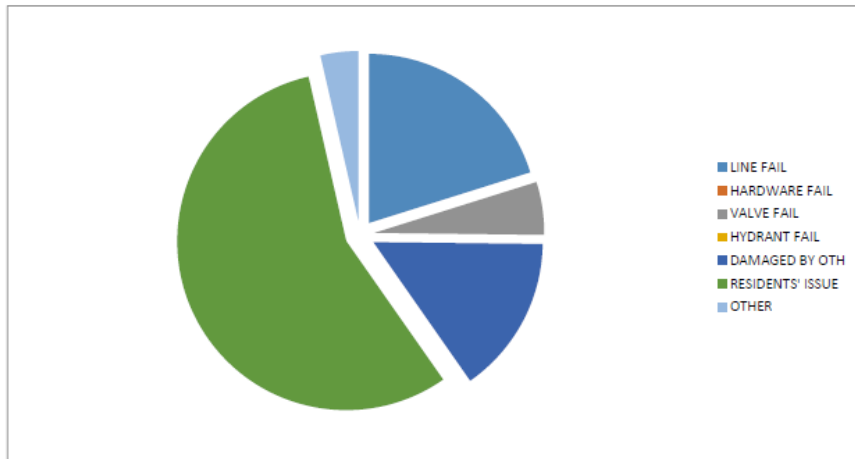
2019 Year End Water Repair Report

LINE FAIL	HARDWARE FAIL	VALVE FAIL	HYDRANT FAIL	DAMAGED BY OTH	MAIN LINE FAIL	OTHER	TOTAL
10	10	5	6	9	16	4	60



2020 Year End Water Repair Report

LINE FAIL	HARDWARE FAIL	VALVE FAIL	HYDRANT FAIL	DAMAGED BY OTH	RESIDENTS' ISSUE	OTHER	TOTAL
28	0	7	0	21	78	5	139



2021 Year End Water Repair Report

LINE FAIL	HARDWARE FAIL	VALVE FAIL	HYDRANT FAIL	DAMAGED BY OTH	RESIDENTS' ISSUE	OTHER	TOTAL
19	0	13	0	29	54	16	131

